LEGAL AND JUDICIAL ETHICS AND PRACTICAL EXERCISES

POLITICAL AND INTERNATIONAL LAW

(2018 Cases)

BY:

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CELESTINO MALECDAN, *Complainant,* -versus- ATTY. SIMPSON T. BALDO, *Respondent.*
A.C. No. 12121, SECOND DIVISION, June 27, 2018, CAGUIOA, *J*.

Section 9 of P.D. 1508 mandates personal confrontation of the parties because "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."

FACTS:

Complainant Celestino Malecdan filed an administrative complaint against respondent Atty. Simpson T. Baldo for his alleged violation of Section 9 of Presidential Decree 1508 or the *Katarungang Pambarangay* Law, which prohibits the participation of lawyers in the proceedings before the *Lupon*.

Malecdan had earlier filed a complaint for Estafa, Breach of Contracts and Damages against spouses James and Josephine Baldo before the *Lupon* of Barangay Pico in La Trinidad, Benguet. Atty. Baldo later appeared as the counsel of spouses Baldo during the hearing on the subject complaint before the *Punong Barangay.*

Malecdan proceeded to file a complaint before the IBP Baguio-Benguet Chapter. Atty. Baldo admitted the allegation but explained that he was permitted by the parties to participate in the said hearing, to which Malecdan alleged that he vehemently objected.

Investigating Commissioner Robles recommended that Atty. Baldo be given a warning because it was 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. The IBP Board of Governors reversed the recommendation and instead recommended that Atty. Baldo be reprimanded.

ISSUE:

Whether or not Atty. Baldo should be reprimanded instead of being given a warning. (YES)

RULING:

The Supreme Court upheld the findings and recommendation of the IBP Board of Governors, as the language of P.D. 1508 is mandatory in barring lawyers from appearing before the Lupon.

As stated in the case of Ledesma v. Court of Appeals, Section 9 of P.D. 1508 mandates personal confrontation of the parties because "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."

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). 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 unlawful. 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 1.01of 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, Barangay Pico, Municipality of La Trinidad in Benguet. Thus, the Supreme Court found Atty. Baldo liable and was reprimanded with a stem warning that a repetition of the same or similar act would be dealt with more severely.

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MARJORIE A. APOLINAR-PETILO, *Complainant*, -versus- ATTY. ARISTEDES A. MARAMOT, *Respondent.*
A.M. No. 9067, THIRD DIVISION, January 31, 2018, BERSAMIN, *J.*

The respondent cannot be relieved by his justifications and submissions. As a lawyer, he should not invoke good faith and good intentions as sufficient to excuse him from discharging his obligation to be truthful and honest in his professional actions. His duty and responsibility in that regard were clear and unambiguous. In Young v. Batuegas, the Court reminded that truthfulness and honesty had the highest value for attorneys.

The omission indicated that the deed of donation was not complete. Hence, the notarial acknowledgment of the deed of donation was improper. ***Rule II Section 1 of the Rules on Notarial Practice provides that:***

> *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 presents an* ***integrally complete instrument or document;***

FACTS:

In her complaint-affidavit, complainant Marjorie A. Apolinar-Petilo (Marjorie) alleges that the respondent consented to, abetted and participated in the illegal act of falsifying a public document The public document in question was the deed of donation executed in favor of Princess Anne Apolinar-Petilo (Princess Anne) and Ma. Mommayda V. Apolinar (Mommayda) who were only 12 years old and 16 1/2 years old, respectively, at the time of its execution. Asserting that the respondent had known of the minority of the donees, Marjorie insists that he was thereby guilty of falsification first in his capacity as a lawyer by preparing the deed of donation and indicating therein that both donees were then "of legal age"; and as a notary public by notarizing the document. She claims that he, being Mommayda's counsel in the latter's adoption case, was aware of the untruthful statements he made in the deed of donation because he thereafter submitted the deed of donation as evidence therein. Respondent submitted that he did not employ any falsity because it was only Margarita — the donor — who had in fact attested to the execution of the deed of donation in the notarial acknowledgement of the deed of donation; that it was inconsequential even if Princess Anne had signed the deed of donation not in his presence; that in conveyances, only the person encumbering or conveying needed to personally appear, sign and acknowledge the deed before the notary public; and that Princess Anne and Mommayda's names were placed in the document merely for them to accept the donation.

ISSUE:

Whether Atty. Maramot participated in the illegal act of falsifying a public document and thereby violated the Lawyer's Oath, Rules 1.01 and 1.02 of Canon 1 and Rule 10.01 of Canon 10. (YES)

RULING:

As a Lawyer

Pertinent in this case are Rule 1.01 and Rule 1.02 of Canon 1; and Rule 10.1 of Canon 10, which provide:

> 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.
>
> 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.

The respondent prepared the deed of donation. At the time of his preparation of the document, he actually knew that Princess Anne was a minor; hence, his claim of having then advised that her parents should represent her in the execution of the document. Mommayda was likewise a minor. His awareness of the latter's minority at the time was not disputed because he was also representing Mommayda in the latter's adoption proceedings aside from being Mommayda's neighbor. Nonetheless, he still indicated in the deed of donation that the donees were of legal age. His doing so, being undeniably dishonest, was contrary to his oath as a lawyer not to utter a falsehood. He thereby consciously engaged in an unlawful and dishonest conduct, defying the law and contributing to the erosion of confidence in the Law Profession. The respondent cannot be relieved by his justifications and submissions. As a lawyer, he should not invoke good faith and good intentions as sufficient to excuse him from discharging his obligation to be truthful and honest in his professional actions. His duty and responsibility in that regard were clear and unambiguous. In Young v. Batuegas, the Court reminded that truthfulness and honesty had the highest value for attorneys.

As a Notary Public

The respondent is also being hereby charged with having executed the notarial acknowledgment for the deed of donation despite Princess Anne not having actually appeared before him. The respondent explains that he did not employ any falsity or dishonesty, and that he did not make untruthful statements in executing the notarial acknowledgment.

Nonetheless, the respondent's denial of having employed any falsity or dishonesty, or of making untruthful statements in executing the notarial acknowledgment does not necessarily save the day for him. There is no question that a donation can be accepted in a separate instrument. However, the deed of donation in question was also the same instrument that apparently contained the acceptance. The names of Princess Anne and Mommayda as the donees, even if still minors, should have been included in the notarial acknowledgment of the deed itself; and, in view of their minority, the names of their respective parents (or legal guardians) assisting them should have also been indicated thereon. This requirement was not complied with. Moreover, Princess Anne and Mommayda should have also signed the deed of donation themselves along with their assisting parents or legal guardians. The omission indicated that the deed of donation was not complete. Hence, the notarial acknowledgment of the deed of donation was improper. **Rule II Section 1 of the Rules on Notarial Practice provides that:**

> 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 presents an **integrally complete instrument or document**;

JUNIELITO R. ESPANTO, *Complainant*, -versus- ATTY. ERWIN V. BELLEZA, *Respondent.*
A.C. No. 10756, SECOND DIVISION, February 21, 2018, PERALTA, *J.*

Atty. Belleza violated ***Canon 1 of the Code of Professional Responsibility****, which mandates the obedience of every lawyer to laws and legal processes, when he failed to: (1)* ***issue the notice to***

vacate to Junielito while the case was still pending litigation*; (2)* ***to inform Junielito of the sale of Nelia's property in contravention to the stipulation in the acknowledge receipt****; and (3)* ***violated the stipulations in the Compromise Agreement due to the absence of the relocation survey****.*

FACTS:

JunielitoEspanto (Junielito) filed this complaint against Att. Erwin V. Belleza for grave misconduct, malpractice, deliberate falsehood, violation of oath of office, and violation of the Code of Professional Responsibility in connection with the demolition of complainant's 2-storey residential house, without his knowledge and against his will.

Junielito alleged that he is the owner of a 2-storey concrete residential house located in Leyte City but sometime in 2006 while working abroad, he was informed that Nelia Alibangbang-Miller (Nelia), their neighbor, was claiming that **his house was encroaching on a portion of the adjoining lot she bought.** Thereafter, **Nelia filed a case for Recovery of Possession with Damages** before the Municipal Circuit Trial Court of MacArthur, Leyte **against the other relatives of Junielito but not against him**. In January 2009, after Junielito went back to the Philippines, he averred that Nelia would always harass him to pay the potion of the land allegedly being encroached upon by his house. He complained that Nelia even threatened to demolish their houses as she already won the case she filed against the relatives of Junielito.

On 22 November 2010, **Atty. Belleza notified Junielito that he is given seven days to vacate the subject property of his client, Nelia.** After seven days, Nelia posted a notice on the door of his house stating that his seven days were up and padlocked the gate of Junielito's house. Weeks after the incident,**Junielito alleged that Atty. Belleza went to his house and threatened him that they will file a writ of execution to demolish his house if he will not agree to sell and vacate his house**, but because he was growing tired of the situation, Junielito agreed to sell the house **with the agreement that Atty. Belleza and Nelia will inform him if there be a buyer of the property so he can participate in the sales transaction.** However, Junielito was surprised to know that months after the agreement, **his house was being demolished with the participation of Nelia and the alleged buyer of the property.** He felt aggrieved because not only did Atty. Belleza fail to inform him of the sale of the property, but they also had his house demolished without his knowledge and consent, and without a permit from the municipal government. Due to this fact, Junielito argues that Atty. Belleza**not only failed to observe his duty and obligations as a lawyer,but he likewise showed his unfitness to be retained as a member of the Bar.**

Atty. Belleza countered that there was already a Compromise Agreement between the parties which was approved by the court. He, likewise, denied that he had any participation in the demolition of complainant's house.

The Integrated Bar of the Philippines (IBP)-Commission on Bar Discipline recommended that Atty. Belleza be suspended from the practice of law for six months. However, the IBP-Board of Governors resolved to adopt and approve with modifications the recommendation by suspending Atty. Belleza for three months.

ISSUE:

Whether Atty. Belleza be suspended for violating the Code of Professional Responsibility. (YES)

RULING:

Atty. Belleza failed to exercise the good faith required of a lawyer in handling the legal affairs of his client. **Atty. Belleza cannot deny that the subject property sold by Nelia was still pending litigation due to the alleged encroachment of Junielito's house on the property of Nelia.**It is clear that he violated **Canon 1 of the Code of Professional Responsibilitywhich mandates the obedience of every lawyer to laws and legal processes.** A lawyer is expected to respect and abide by the law and thus, avoid any act or omission that is contrary thereto.

Atty. Belleza's**failure to inform Junielito the sale of the property despite their agreement** to such effect, **Atty. Belleza did not only breach their agreement and betrayed Junielito's trust; he also instigated a malicious and unlawful transaction to the prejudice of Junielito**.

Furthermore, Atty. Belleza knew that the complainant was not a party in the civil case where his 2-storey concrete residential house appeared to be encroaching on Nelia's property but **even assuming that there was already a compromise agreement, it was malicious to sell Nelia's property without complying with the conditions and agreements set forth therein.** In the said compromise agreement, **the parties agreed that a relocation survey** be conducted to identify the boundaries of the lots. The fact that Atty. Belleza ignored the provisions of the Compromise Agreement **by proceeding with the sale even without the relocation survey, there is no question that he wantonly violated Canon 1 of the Code of Professional Responsibility.**

In addition, Atty. Belleza's**actuations which resulted in the demolition of Junielito's house violated Canon 1 of the Code of Professional Responsibility**, which mandates that a lawyer must uphold the Constitution and promote respect for the legal processes. In fact, contrary to this edict, Atty. Belleza's act of demanding Junielito to vacate his house violated the basic constitutional right of Junielito not to be deprived of a right or property without due process of law.

FRANCO B. GONZALES, *Complainant,* -versus- ATTY. DANILO B. BAÑARES, *Respondent.*
A.C. No. 11396, SECOND DIVISION, June 20, 2018, PERALTA, *J.*

*Atty. Bañares's act of notarizing the subject deed of sale **without Rodolfo personally appearing before him** falls within the prohibition of Rule 1.01 of Canon 1 of the Code of Professional Responsibility which provide:*

> *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.*

*The evidence showed **that Rodolfo was not present** at the time of the execution of the Deed of Absolute Sale. There is no documentary or testimonial evidence that would prove that he was present*

and personally affixed his signature on the deed before Atty. Bañares. Moreover, Atty. Bañares himself claimed that ***Rodolfo merely pre-signed the document.*** *Such admission is contrary to his certification that Rodolfo personally appeared before him at the time the deed was made.*

FACTS:

Franco Gonzales contended that a Deed of Absolute Sale covering three parcels of land was executed between his mother, as the seller, and one Flordeliza Soriano, as the buyer. The name and signature of Franco and his father were found in the document despite them not being present at the time of said signing. Franco maintained that Atty. Danilo Bañares knew of these facts but still proceeded with the notarization of the document.

Atty. Bañares denied the accusations against him and claimed that Franco's father pre-signed the document and that Franco was present during the signing of the deed of sale.

The Commission on Bar Discipline recommended Atty. Bañares's suspension from his Commission as Notary Public.

ISSUE:

Whether Atty. Bañares be suspended from his Commission as Notary Public. (YES)

RULING:

Atty. Bañares's act of notarizing the subject deed of sale **without Rodolfo personally appearing before him** falls within the prohibition of Rule 1.01 of Canon 1 of the Code of Professional Responsibility which provide:

> 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.

The Court has consistently held that **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.** Notarization of documents ensures the authenticity and reliability of a document. It converts a private document into a public one and renders it admissible in court without further proof of its authenticity.

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 in said document.** The purpose of which 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.

The evidence showed **that Rodolfo was not present** at the time of the execution of the Deed of Absolute Sale. There is no documentary or testimonial evidence that would prove that he was

present and personally affixed his signature on the deed before Atty. Bañares. Moreover, Atty. Bañares himself claimed that **Rodolfo merely pre-signed the document.** Such admission is contrary to his certification that Rodolfo personally appeared before him at the time the deed was made.

PAULINO LIM, *Complainant,* -versus- ATTY. SOCRATES R. RIVERA, *Respondent.*
A.C. No. 12156, SECOND DIVISION, June 20, 2018, PERLAS-BERNABE, *J.*

***Good character is an essential qualification for the admission to and continued practice of law**. Thus, any wrongdoing, **whether professional or non-professional**, indicating unfitness for the profession justifies disciplinary action, as in this case.*

*Atty. Rivera had obtained a loan from Lim for which he issued a post-dated check. The check was eventually dishonored by the bank. Lim failed to settle his obligation despite repeated demands from the complainant. It has been consistently held that **"the deliberate failure to pay just debts and the issuance of worthless checks constitute gross misconduct, for which a lawyer may be sanctioned with suspension from the practice of law."***

FACTS:

According to Paulino Lim, Atty. Socrates Rivera borrowed from him P75,000.00. Lim immediately issued a check in favor of Atty. Rivera since the latter issued a guarantee check to ensure the payment of the loan. Atty. Rivera made several loans thereafter in the amounts of P150,000.00, P10,000.00, and P10,000.00 for which he no longer issued any guarantee checks. When Lim deposited the guarantee check, it was dishonored by the bank for having been drawn against a closed account. Lim claimed that Atty. Rivera would not respond anymore to his text messages nor return his calls. Lim wrote a demand letter but to no avail. Thus, he was constrained to file an administrative case before the IBP. Atty. Rivera did not file an answer to the complaint. He also did not appear to the mandatory conference/hearing. The IBP found Atty. Rivera administratively liable for his act of issuing a worthless check in violation of Rule 1.01 of the Code of Professional Responsibility. It held that the act indicates a lawyer's unfitness for the trust and confidence reposed on him.

ISSUE:

Whether Atty. Rivera should be held administratively liable for the issuance of a worthless check in violation of the CPR. (YES)

RULING:

Atty. Rivera's act of issuing a worthless check was a violation of Rule 1.01, Canon 1 of the 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.

The Court held that **good character is an essential qualification for the admission to and continued practice of law**. Thus, any wrongdoing, **whether professional or non-professional**, indicating unfitness for the profession justifies disciplinary action, as in this case.

Atty. Rivera had obtained a loan from Lim for which he issued a post-dated check. The check was eventually dishonored by the bank. Lim failed to settle his obligation despite repeated demands from the complainant. It has been consistently held that **"the deliberate failure to pay just debts and the issuance of worthless checks constitute gross misconduct, for which a lawyer may be sanctioned with suspension from the practice of law."**

In addition, Atty. Rivera's failure to answer and failure to appear despite notice are evidence of his flouting resistance to lawful orders of the court and illustrate his despiciency for his oath of office in violation of Section 3, Rule 138, Rules of Court.

SAMUEL N. RODRIGUEZ, *Complainant,* -versus- HON. OSCAR P. NOEL, JR., Executive Judge/Presiding Judge, RTC of General Santos City, *Respondent.*
A.C. No. RTJ-18-2525, SECOND DIVISION, June 25, 2018, PERLAS-BERNABE, *J.*

The failure to consider a basic and elementary rule, a law or principle in the discharge of his duties, a judge is either too incompetent and undeserving of the position and the title he holds or is too vicious that the oversight or omission was deliberately done in bad faith and in grave abuse of judicial authority.

In this case, respondent extended the TRO beyond the period allowed by Section 5, Rule 58 of the Rules of Court, considering that ***at the time he issued the order extending the TRO on July 14, 2015, the original 72-hour TRO issued on July 10, 2015 had already expired at 8:01 a.m. of July 13, 2015.***

FACTS:

Golden Dragon International Terminals, Inc. (GDITI) is in the business of receiving and disposing the liquid and solid waste generated by docking vessels. An incident happened in the port wherein a vehicle stopped in front of complainant Samuel Rodriguez and a number of armed men stepped out and pointed their guns at him.

As a result of the incident, Rodriguez filed a complaint for Frustrated Murder on June 29, 2015 against the management of GDITI Cirilo Basalo and his companions.However, on **June 28, 2015**, a Sunday, respondent issued a Temporary Release Order in favor of Basalo and one of his companions, Arjay J. Balansag.

Rodriguez argued that while executive judges can act on petitions for bail on Sundays and holidays, a petition for bail must be filed before the court can act on it; here, it was only on June 29, 2015, or the following Monday, that Basalo and his companions actually filed the Petition (Determination of Bail).

Another, Rodriguez claimed that in a civil case filed by GDITI against him, respondent issued, on July 10, 2015,a 72-hour temporary restraining order (TRO) enjoining him from causing any act that might cause violence and to maintain the status quo in GDITI. To his surprise, however, on July 14,

2015, the 72-hour TRO was extended for another twenty (20) days, or way beyond the 72-hour period.

On the issue of the propriety of the issuance of the June 28, 2015 Temporary Release Order, respondent averred that the accused were, in fact, arrested and detained by the police on June 26, 2015. On the evening of June 28, 2015, which fell on a Sunday, a representative of the accused, together with their lawyer, went to his house bringing with them a petition for bail.

On the issue of the propriety of the issuance of the 72-hour TRO, respondent claimed that he issued the same on July 10, 2015, a Friday, in his capacity as an Executive Judge. As no raffle could be conducted within that 72-hour period as required by the Rules of Court because it was a weekend, the special raffling was set the following Monday, or on July 13, 2015 with the case eventually being raffled to him.

The OCA found respondent guilty of gross ignorance of the law when he issued the assailed orders relative to the TRO.

ISSUE:

Whether the respondent should be held administratively liable. (YES)

RULING:
In short, while the petition for bail was filed with the OCC only **on June 29, 2015**, the application for bail and comment thereon by the City Prosecutor had been submitted to and considered by respondent on **June 28, 2015** before he issued the order for the temporary release of the accused. **There is nothing in the law or the rules that prevented respondent from acting on the bail application submitted to him on a weekend.** Accordingly, respondent acted in accordance with the rules in granting the application for bail.

As regards the 72-hour TRO, the Court agrees with the findings and recommendations of the OCA. In this case, the Court agrees that respondent extended the TRO beyond the period allowed by Section 5, Rule 58 of the Rules of Court, considering that **at the time he issued the order extending the TRO on July 14, 2015, the original 72-hour TRO issued on July 10, 2015 had already expired at 8:01 a.m. of July 13, 2015.** Thus, in conducting the summary hearing and issuing the July 14, 2015 Order, respondent in effect revived what would have already been an expired 72-hour TRO and extended the same to a full twenty (20)-day period beyond the Rules' contemplation. The Rules' requirements are very clear, basic, and leave no room for interpretation. Clearly, therefore, respondent erred in failing to comply with these elementary provisions.

As a matter of public policy, the acts of a judge in his official capacity are not subject to disciplinary action, even though such acts are erroneous. It does not mean, however, that a judge, given the leeway he is accorded in such cases, should not evince due care in the performance of his adjudicatory prerogatives. As the Court held in OCA v. Vestil, citing De Leon v. Corpuz:

> The observance of the law, which respondent judge ought to know, is required of every judge. When the law is sufficiently basic, a judge owes it to his office to simply apply it; x xx**failure to consider a basic and elementary rule, a law or principle in the discharge of his duties, a**

judge is either too incompetent and undeserving of the position and the title he holds or is too vicious that the oversight or omission was deliberately done in bad faith and in grave abuse of judicial authority.

GERONIMO J. JIMENO, JR., *Complainant,* -versus- ATTY. FLORDELIZA M. JIMENO, *Respondent.*
A.C. No. 12012, SECOND DIVISION, July 2, 2018, PERLAS-BERNABE, *J.*

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.*

Atty. Flordeliza have allowed herself to become a party to a document which contained falsehood and/or inaccuracies in violation of her duties as a lawyer, namely: (a) to refrain from doing or consenting to any falsehood; (b) to employ only fair and honest means to attain the lawful objectives of his client; and (c) to refrain from allowing his client to dictate the procedure in handling the case.

FACTS:

Geronimo Jimeno, Jr. (Geronimo Jr.) discovered that Atty. FlordelizaJimeno (Atty. Flordeliza), who is his cousin, sold the property of his parents, the late Spouses Geronimo Jimeno, Sr. (Geronimo Sr.) and Perla de Jesus Jimeno (Perla) located in San Jose, Quezon City (Malindang property) through a Deed of Absolute Sale dated September 8, 2005 executed by Atty. Flordelza as attorney-in-fact by Geronimo Sr.

Geronimo Jr. claimed that the subject deed was falsified considering that: (*a*) the same bore the signature of Perla who had already passed away on May 19, 2004, or more than a year prior to the execution thereof; (*b*) Geronimo Sr. was erroneously described as married to Perla, when he was already a widower at the time; (*c*) Geronimo Sr. was made to appear as the absolute and registered owner in fee simple of the property when the same is co-owned by him and his ten (10) children (Jimeno children); and (*d*) Geronimo Sr.'s residence and postal address was stated as "421 (formerly 137) Mayon Street, Quezon City," when it should have been "10451 Bridgeport Road, Richmond, British Columbia" as indicated in the Special Power of Attorney he executed, authorizing Atty. Flordeliza to administer and sell his real properties in the Philippines. Geronimo Jr. likewise alleged that respondent mentioned "so many unnecessary and un-called for matters like his father having allegedly illegitimate children" when his lawyer requested for copies of the titles and other documents respecting the properties covered by the SPA, in violation of her duty to keep in confidence whatever information were revealed to her by the late Geronimo Sr. in the course of their professional relationship (lawyer-client privilege).

In her defense, Atty. Flordeliza claimed that: (*a*) she was not the one who prepared or caused the preparation of the subject deed and that all the necessary documents for the sale of the Malindang property, including the subject SPA and the Deed of Waiver of Rights and Interests dated executed by the Jimeno children in their parents' favor, were merely transmitted by her cousin and respondent's sister, Lourdes Jimeno-Yaptinchay (Lourdes), from Canada; (*b*) the sale of the Malindang property was with the consent of all the Jimeno children; and (*c*) she merely signed the subject deed in good faith before endorsing the same to the buyer. Atty. Flordeliza further claimed

that the contents of her email dated April 24, 2012 to complainant's lawyer are "privileged communication" which are relevant to the subject of inquiry, and they did not arise from the confidences and secrets of the late Geronimo Sr. She challenged complainant's invocation of Canon 21, contending that the matter is personal to a client, and is intransmissible in character.

IBP-CBD, in its report and recommendation, found Atty. Flordeliza to have allowed herself to become a party to a document which contained falsehood and/or inaccuracies in violation of her duties as a lawyer, namely: (*a*) to refrain from doing or consenting to any falsehood; (*b*) to employ only fair and honest means to attain the lawful objectives of his client; and (*c*) to refrain from allowing his client to dictate the procedure in handling the case. IBP Board of Governors adopted IBP-CBD's recommendation. According to Director Esguerra, Atty. Flordeliza's dishonest acts in relation to the subject SPA and the subject deed constitute blatant transgressions of her duties as a lawyer under Rule 1.01 of the CPR.

ISSUE:

Whether or not Atty. Flordeliza should be held administratively liable for the acts complained of. (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. 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.

Pertinent to this case are Rule 1.01 of Canon 1, Rule 15.07 of Canon 15, and Rule 19.01 of Canon 19, which provide:

> 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.
>
> xxx xxxxxx
>
> CANON 15 — A lawyer shall observe candor, fairness and loyalty in all his dealings and transactions with his clients.
>
> xxx xxxxxx
>
> Rule 15.07 — A lawyer shall impress upon his client *compliance with the laws* and the principles of fairness.
>
> xxx xxxxxx
>
> 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 x xx.

Atty. Flordeliza's acts in relation to the subject SPA and the subject deed constitute blatant transgressions of her duties as a lawyer, as ordained by Rule 1.01 of Canon 1 of the CPR, which

engraves an overriding prohibition against ***any*** form of misconduct. Additionally, the Court finds that she fell short of her duty to **impress upon her client compliance with the pertinent laws** in relation to the subject transaction. While seemingly aware of the demise of Perla that rendered the Malindang property a co-owned property of Geronimo Sr. and the Jimeno children, instead of advising the latter to settle the estate of Perla to enable the proper registration of the property in their names preliminary to the sale to Aquino, she voluntarily signed the subject deed, as attorney-in-fact of Geronimo Sr., despite the patent irregularities (those contended by Geronimo Jr.) in its execution.

As stated by the IBP-CBD, Atty. Flordeliza have allowed herself to become a party to a document which contained falsehood and/or inaccuracies in violation of her duties as a lawyer, namely: (*a*) to refrain from doing or consenting to any falsehood; (*b*) to employ only fair and honest means to attain the lawful objectives of his client; and (*c*) to refrain from allowing his client to dictate the procedure in handling the case

LEAH TADAY, *Complainant,* -versus- ATTY. DIONISIO APOYA, JR., *Respondent.*
A.C. No. 11981, EN BANC, July 3, 2018, PER CURIAM.

Canon 1 of the CPR orders a lawyer to uphold the constitution, obey the laws of the land and promote respect for law and for legal processes. Rules 1.01 and 1.02 mandates a lawyer not to engage in unlawful, dishonest, immoral or deceitful conduct and not to counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system.

Atty. Apoya committed unlawful, dishonest, immoral and deceitful conduct, and lessened the confidence of the public in the legal system when he authored a fake decision allegedly issued by Branch 162 and by Judge Ma. Elizabeth Becamon-Angeles, which are both inexistent, and delivered such decision to his client.

FACTS:

Leah Taday (Taday), an OFW staying in Norway, asked her parents in the Philippines, to seek legal services for the nullification of her marriage. Taday's parents found Atty. Dionisio Apoya (Atty. Apoya) and contracted his legal services. Thereafter, a Retainer Agreement was executed.

Atty. Apoya assured Taday that her absence would not be an issue as he can find ways to push the resolution of the case. Subsequently, Atty. Apoya drafted a Petition for Annulment of Marriage which he allegedly sent to Taday for her signature. After notarizing the petition, Atty. Apoya filed it before the RTC of Caloocan and was then raffled to Branch 131.

While on vacation in the Philippines on November 17, 2011, 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. Elizabeth 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. Verifications were made to ascertain the validity of the decision

and Taday discovered that both Branch 162 and Judge Ma. Elizabeth Becamon-Angeles do not exist. Taday, through her parents, sought the withdrawal of the Atty. Apoya as counsel.

In his defense, Atty. Apoya denied being informed that Taday was an OFW and claimed that he was made to believe that she was merely in Bicol province. Further, he denied delivering any decision relative to the annulment case.

A complaint was filed before the IBP against Atty. Apoya for violating the Code of Professional Responsibility in authoring a fake decision. In its Report and Recommendation, the IBP-CBD found Atty. Apoya violated the Code, particularly, Rules 1.01, 1.02 and Canon 1. Also, IBP-CBD held that Atty. Apoya notarized the Verification and Certification of Non-Forum Shopping even though Taday was in Norway. In addition, Atty. Apoya authored a fake decision. The said decision was fake because it bore the same format and grammatical errors as that of the petition prepared by respondent. The IBP Board of Governors adopted IBP-CBD's report and recommendation.

ISSUE:

Whether or not Atty. Apoya violated Rules 1.01, 1.02, Canon 1, and 2004 Rules on Notarial Practice. (YES)

RULING:

Atty. Apoya notarized the petition even though Taday was not present

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.

In this case, Atty. Apoya notarized the verification and certification of non forum shopping in the petition filed before RTC Branch 131 supposedly executed by Taday. At that time, however, Taday was not in the Philippines because she was still in Norway. Undoubtedly, Atty. Apoya violated the notarial rules when he notarized a document without the personal presence of the affiant.

Atty. Apoya authored a fake decision

Atty. Apoya committed an even graver transgression by drafting a fake decision and delivering it to his client in guise of a genuine decision. He delivered a decision which purportedly granted the petition for annulment of marriage in Taday's favor. This decision is marred by numerous and serious irregularities that point to Atty. Apoya as the author.

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 respondent. 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.

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. Respondent 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 respondent 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 respondent, complainant and her parents sought the assistance of another lawyer. Atty. Verzosa, through a letter dated February 26, 2013, confronted respondent regarding the payment of attorney's fees and the fake decision which respondent gave to complainant. However, Atty. Apoya neither answered nor denied the allegation of Taday's new counsel.

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.

JULIETA DIMAYUGA, complainant, vs. ATTY. VIVIAN G. RUBIA, respondent.
A.C. No. 8854, EN BANC, July 3, 2018, TIJAM, J.

I. In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence or such evidence as a reasonable mind may accept as adequate to support a conclusion." Corollary to this is the established rule that he who alleges a fact has the burden of proving it for mere allegation is not evidence.

In this case, there is nothing on the records, except for complainant's bare allegation, which proves that P150,000 was indeed given to respondent on June 17, 2002.

II. A lawyer's conduct ought to and must always be scrupulously observant of the law and ethics. CANON 1 of the 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.

FACTS:

Dimayuga averred that she and her family engaged respondent's legal services to effect the transfer of their deceased father's property to them. Respondent 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. Upon inquiry, 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 contrary to her representations with the complainant's family, respondent 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.

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. Moreover, the Deed of Absolute Sale dated June 27, 2003 for the purchase of a parcel of land prepared by respondent, was covered by Transfer Certificate of Title (TCT) No. CARP-03000. The title was issued on February 5, 1997 and registered with the Registry of Deeds of Davao del Sur on February 6, 1997. Being a land covered by Certificate of Land Ownership Award (CLOA), the following limitation was stated on the face of the TCT, viz.:

> *[S]ubject to the condition that 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 of ten (10) years, x xx.*

Thus, on June 27, 2003, the sale of the property was still prohibited. Complainant averred that they merely relied on the ability and knowledge of respondent as lawyer, who should not have assented to the sale of the said property due to the prohibition.

Hence, complainant prayed that respondent be administratively disciplined for her actions.

ISSUE:

Whether or not respondent is administratively liable. (YES)

RULING:

The SC found that the allegations of delay in the performance of duty and misappropriation of funds were not sufficiently substantiated. "In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence or such evidence as a reasonable mind may accept as adequate to support a conclusion." Corollary to this is the established rule that he who alleges a fact has the burden of proving it for mere allegation is not evidence. "The complainant has the burden of proving by substantial evidence the allegations in the complaint."

In this case, complainant alleged that she and her family gave respondent P150,000 on June 17, 2002, inclusive of respondent's attorneys fees and the legal fees necessary for the transfer of the property. 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.

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 R.A. 6657.

A lawyer's conduct ought to and must always be scrupulously observant of the law and ethics. CANON 1 of the 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.

In view of the foregoing, the SC found Atty. Vivian G. Rubia guilty of violating Section 27, Rule 138 of the Rules of Court, CANON 1 and Rule 15.07 of the CPR, and the Rules on Notarial Practice. Accordingly, she is SUSPENDED from the practice of law for three (3) years and DISQUALIFIED from being commissioned as a notary public for a period of three (3) years.

JILDO A. GUBATON, *complainant*, -versus- ATTY. AUGUSTUS SERFAIN D. AMADOR, *respondent.*

A.C. No. 8962, SECOND DIVISION, July 9, 2018, PERLAS-BERNABE, *J.*

Finally, it should be clarified that while the information supplied by complainant and Bernadette's house helper and secretary about the alleged illicit affair constitute hearsay, the same should not be completely disregarded. ***In Re: Verified Complaint of Umali, Jr. v. Hernandez:***

> *It was emphasized that to satisfy the substantial evidence requirement for administrative cases,* ***hearsay evidence should necessarily be supplemented and corroborated by other evidence that are not hearsay****.*

Given that the purported hearsay are supplemented and corroborated by other evidence that are not hearsay, the Court finds no cogent reason not to apply the same pronouncement to this particular case.

Based on jurisprudence, extramarital affairs of lawyers are regarded as offensive to the sanctity of marriage, the family, and the community. When lawyers are engaged in wrongful relationships that blemish their ethics and morality, the usual recourse is for the erring attorney's suspension from the practice of law, if not disbarment. This is because possession of good moral character is both a condition precedent and a continuing requirement to warrant admission to the Bar and to retain membership in the legal profession.

FACTS

Complainant alleged that respondent, was having an illicit romantic relationship with his wife, Bernadette. He averred that while working in the USA, when he discovered the illicit relationship. Complainant's house helper informed him through a phone call that a man whom she knows to be "Fiscal Amador" often visits Bernadette. The house helper also told him that respondent spends nights at their house and stays with Bernadette in their bedroom. When complainant called Bernadette's dental clinic to verify the information, it was the secretary who took his call. Upon inquiry, the latter confirmed that respondent and Bernadette have been carrying on an illicit affair.

Complainant returned to the country. He alleged that Bernadette wrote love letters to respondent. Complainant likewise alleged that he personally saw respondent and Bernadette together in various places. At one instance, he saw them kissing while inside a vehicle; when he approached to confront them, respondent ran away. The illicit affair of respondent and Bernadette was known to other people as well.

In defense, respondent denied all the allegations against him. He claimed that he was merely acquainted with Bernadette and they would only see each other on various occasions and social gatherings.

The Commission on Bar Discipline of the IBP issued a Report and Recommendation recommending the dismissal of the affidavit-complaint for insufficiency of evidence and that the information supplied by the complainant, the house helper, and the clinic secretary were purely hearsay. However, the IBP Board of Governors reversed the Report and Recommendation, and instead suspended responded from the practice of law for 2 years.

ISSUE

Whether or not grounds exist to hold respondent administratively liable. (YES)

RULING

Respondent should be held administratively liable. In this case, substantial evidence exist to prove complainant's claim that respondent had illicit affairs with Bernadette and hence, should be adjudged guilty of gross immorality.

As per complainant's own account, he actually saw respondent and Bernadette together on various intimate occasions. In fact, he attempted to confront them at one time when he saw them kissing inside a vehicle, although respondent was able to evade him. The Court is inclined to believe that complainant's imputations against respondent are credible, considering that he had no ill motive to accuse respondent of such a serious charge — much more a personal scandal involving his own wife — unless the same were indeed true.

Moreover, complainant's sister, described to complainant that while the latter was in the USA, respondent would often visit Bernadette and spend the night in their residence and likewise recounted that whenever the two of them arrived home in one vehicle, they would kiss each other before alighting therefrom.

Finally, it should be clarified that while the information supplied by complainant and Bernadette's house helper and Bernadette's clinic secretary about the alleged illicit affair constitute hearsay, the same should not be completely disregarded. **In Re: Verified Complaint of Umali, Jr. v. Hernandez:**

> It was emphasized that to satisfy the substantial evidence requirement for administrative cases, **hearsay evidence should necessarily be supplemented and corroborated by other evidence that are not hearsay**.

Given that the purported hearsay are supplemented and corroborated by other evidence that are not hearsay, the Court finds no cogent reason not to apply the same pronouncement to this particular case.

For his part, respondent only proffered a bare denial of the imputed affair. He insists that he was merely acquainted with Bernadette and that they would only see each other during social gatherings or by pure accident. The thrust of his denial was that, although they would see each other on occasion, such meetings were innocent. Suffice it to say that "denial is an intrinsically weak defense. In any event, the Court observes that the alleged "accidental" and "innocent" encounters of respondent and Bernadette are much too many for comfort and coincidence. Such encounters actually buttress the allegations of the witnesses that they carried on an illicit affair. All told, the Court finds that substantial evidence — which only entail "evidence to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise" — exist to prove complainant's accusation of gross immorality against respondent.

Based on jurisprudence, extramarital affairs of lawyers are regarded as offensive to the sanctity of marriage, the family, and the community. When lawyers are engaged in wrongful relationships that blemish their ethics and morality, the usual recourse is for the erring attorney's suspension from the practice of law, if not disbarment. This is because possession of good moral character is both a condition precedent and a continuing requirement to warrant admission to the Bar and to retain membership in the legal profession. Under the Code of Professional Responsibility:

> **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.

The Court sees fit to impose on respondent a penalty of suspension from the practice of law for a period of one (1) year.

HDI HOLDINGS PHILIPPINES, INC, *Complainant*, -versus- ATTY. EMANUEL N. CRUZ, *Respondent*

AC No. 11724, EN BANC, July 31, 2018, PER CURIAM

Good moral character is necessary for a lawyer to practice the profession. An attorney is expected not only to be professionally competent, but to also have moral integrity. Deceit and lack of accountability and integrity reflect on his ability to perform his functions as a lawyer, who is always expected to act and appear to act lawfully and honestly, and must uphold the integrity and dignity of the legal profession. Atty. Cruz failed in these respects as a lawyer.

FACTS:

HDI alleged that they retained the services of Atty. Cruz as its in house corporate counsel and corporate secretary. In the beginning, the directors and board members were pleased at his

performance and he soon gained their trust and confidence. He eventually handled confidential and important matters of the company. However, through deceit and fraudulent machinations, he managed to misappropriate P41, 317, 167 BY doing the following acts: (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 Secretarys Certificate appointing himself as the authorized person to receive the payments of the lease rentals.

ISSUE:

Whether the Supreme Court should adopt the recommendation of the IBP (YES).

RULING:

Canon 1 provides that a lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and legal processes and Rule 1.0 says a lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

Good moral character is necessary for a lawyer to practice the profession. An attorney is expected not only to be professionally competent, but to also have moral integrity. Deceit and lack of accountability and integrity reflect on his ability to perform his functions as a lawyer, who is always expected to act and appear to act lawfully and honestly, and must uphold the integrity and dignity of the legal profession. Atty. Cruz failed in these respects as a lawyer.

In the instant case, considering all the above-cited infractions, it is beyond dispute that Atty. Cruz is guilty of engaging in dishonest and deceitful conduct. In several occasions, he manifested a propensity to lie and deceive his client in order to obtain money. Obviously, his misrepresentations in order to compel HDI to release money for cash bids, fictitious purchase of a property, the overpriced purchase price of the Q.C. property and his misrepresentation that he had authority to collect rentals in behalf of HDI and CGI, as well as his execution of fictitious documents to give semblance of truth to his misrepresentations, constitute grave violations of the CPR and the lawyer's oath. These reprehensible conduct of Atty. Cruz without doubt breached the highly fiduciary relationship between lawyers and clients.

This Court also sees it fit to note that the CPR strongly condemns Atty. Cruz's conduct in handling the funds of HDI. Rules 16.01 and 16.02 of the Code provide that a lawyer shall account for all money or property collected or received for or from the client and lawyer shall keep the funds of each client separate and apart from his own and those others kept by him.

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. When a lawyer collects or receives money from his client for a particular purpose as in cash for biddings and purchase of properties, as in this case, 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.

VICENTE FERRER A. BILLANES, *Complainant*, *v.* ATTY. LEO S. LATIDO, *Respondent.*

A.C. No. 12066, EN BANC August 28, 2018, PER CURIAM:

Rule 1.01, Canon 1 of the CPR instructs that "as officers of the court, lawyers are bound to maintain not only a high standard of legal proficiency, but also of morality, honesty, integrity, and fair dealing." Indubitably, respondent fell short of such standard when he committed the afore-described acts of misrepresentation and deception against complainant. Such acts are not only unacceptable, disgraceful, and dishonorable to the legal profession; they further reveal basic moral flaws that make respondent unfit to practice law.

In this case respondent assured complainant of the Decision's authenticity, the latter submitted a copy of the same as one of the supporting documents of his Australian visa application. To complainant's surprise, the Australian Embassy informed him of the spurious nature of the RTC Decision, which hence, caused him prejudice, not only in terms of jeopardizing his visa application, but also resulting in more legal expenses since he had to process the annulment of his marriage anew.

FACTS:

Complainant alleged that sometime in 2009, he decided to engage respondent as counsel in order to have his marriage with his estranged Filipina wife, Meriam R. Arietta (Arietta), annulled. After undergoing a series of interviews with respondent and paying the appropriate legal fees, respondent told complainant to await the notice from the court where the former filed the petition. About a month later, respondent informed complainant that his petition was filed before the Regional Trial Court of Ballesteros, Cagayan, Branch 33 (RTC-Ballesteros), docketed as Civil Case No. 33-306B-2008, and that, in fact, a Decision dated May 14, 2009 (RTC Decision), penned by Executive Judge Francisco S. Donato (Judge Donato), was already rendered in his favor. Complainant was then shown a copy of the said Decision; however, he doubted the authenticity of the same, given that: *(a)* regarding the venue of the case, he was a resident of Lipa City, Batangas and yet his petition was filed before the RTC-Ballesteros; and *(b)* the RTC-Ballesteros purportedly granted his petition, without him even participating in the proceedings therein. These concerns notwithstanding, respondent assured complainant of the RTC Decision's authenticity, claiming that "non-appearance" in annulment cases is already allowed.

Complainant then filed an application for an Australian visa, attaching thereto the RTC Decision as a supporting document. In the process, complainant received an electronic mail[9]dated January 24, 2012 from the Australian Embassy, informing him that the RTC Decision was actually "fraudulent" and his submission of the same may result in the denial of his visa application. Surprised, complainant himself verified the matter with the RTC-Ballesteros, which in turn, issued a Certification[10]dated June 15,2012, stating that: *(a)* Civil Case No. 33-3068-2008, entitled *"Vicente Ferrer A. Billanes, petitioner versus Meriam R. Arietta-Billanes, respondent,"* is not filed in the said

office; and *(b)* the signatures of Judge Donato and Clerk of Court VI Atty. Rizalina G. Baltazar-Aquino (COC Aquino) appearing on the RTC Decision and Certificate of Finality, respectively, are fake.

The Investigating Commissioner recommended that respondent be reprimanded for failure to exercise the diligence required of a lawyer to his client

ISSUE:

Whether or not respondent should be held administratively liable. (YES)

RULING:

Applying this standard, the Court finds that respondent's acts are in gross violation of Rule 1.01, Canon 1 of the 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.

Rule 1.01, Canon 1 of the CPR instructs that "as officers of the court, lawyers are bound to maintain not only a high standard of legal proficiency, but also of morality, honesty, integrity, and fair dealing." Indubitably, respondent fell short of such standard when he committed the afore-described acts of misrepresentation and deception against complainant. Such acts are not only unacceptable, disgraceful, and dishonorable to the legal profession; they further reveal basic moral flaws that make respondent unfit to practice law.

2. To the legal profession

Re: CA-G.R. CV No. 96282 (SPOUSES BAYANI AND MYRNA M. PARTOZA -versus- LILIAN B. MONTANO and AMELIA SOLOMON, *Complainant*, -versus- ATTY. CLARO JORDAN M. SANTAMARIA, *Respondent.*)
A.C. No. 11173, FIRST DIVISION, June 11, 2018, DEL CASTILLO, *J.*

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 I 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."

"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." In this case, respondent deliberately ignored five CA Resolutions, thereby violating his duty to observe and maintain the respect due the courts.

FACTS:

A civil action for Declaration of Nullity of Deed of Real Estate Mortgage, Reconveyance of Transfer Certificate of Title No. T-710729 and Damages was filed by the spouses Bayani and Myrna M. Partoza (spouses Partoza) against Lilia B. Montano and Amelia T. Solomon. The case was dismissed by the RTC.

On November 25, 2010, a Notice of Appeal was filed by the counsel on record, Atty. Samson D. Villanueva (Atty. Villanueva). In a Notice dated March 25, 2011, 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; subsequently, a Motion for Extension of Time to File Appellant's Brief 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 dated July 4, 2011.

In a Resolution dated August 4, 2011, the CA directed Atty. Villanueva to submit proof of authority of Honnie to represent appellants as their attorney-in-fact and the latter's conformity to Atty. Villanueva's Withdrawal of Appearance; in the same resolution, the CA also required respondent to submit his formal Entry of Appearance.

Atty. Villanueva then filed a Manifestation with Motion dated August 31, 2011 explaining that he communicated with Honnie 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.

On September 5, 2012 the CA, in another Resolution, declared that: 1) as shown by the Registry Return Receipt dated April 4, 2012, respondent received the copy of its March 20, 2012 Resolution; 2) on June 19, 2012, the Judicial Records Division reported that no compliance with the March 20, 2012 Resolution had been filed by respondent; and 3) respondent was, for the last time, directed to comply with the March 20, 2012 Resolution within five days from notice and to show cause why he should not be cited for contempt for his failure to comply with the CA's Resolutions, dated August 4, 2011 and March 20, 2012; and why the Appellant's Brief filed by him should not be expunged from the *rollo* of the case and the appeal be dismissed. All these directives by the CA were ignored by the respondent.

Thus, in a Resolution 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 the 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 dated September 17, 2013, referred the unlawyerly acts of respondent to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

IBP Investigating Commissioner (IBP IC) 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. IBP Board of Governors adopted and approved the recommendation of the IBP IC.

ISSUE:

Whether respondent is administratively liable. (YES)

RULING:

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 a 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 appearing 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.

This Court, in *Anudon v. Cefra*, citing *Sebastian v. Atty. Bajar*, 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." In this case, respondent deliberately ignored five CA Resolutions, thereby violating his duty to observe and maintain the respect due the courts. We find the penalty of suspension for six (6) months, as recommended by the IBP, commensurate under the circumstances.

ALFRED LEHNERT, *complainant,* -versus- ATTY. DENNIS L. NIÑO, *respondent*

A.C. No. 12174, EN BANC, August 28, 2018, LEONEN *J.*

This Court continues to state that the issuance of worthless checks constitutes gross misconduct and violates Canon 1 of the Code of Professional Responsibility, which mandates all members of the bar "to obey the laws of the land and promote respect for law." Issuance of worthless checks also violates Rule 1.01 of the Code which mandates that "a lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct."

In the present case, Atty. Diño issued a worthless check in favor of Alfred Lehnert. Therefore, he showed dishonesty and gross misconduct.

FACTS:

Alfred Lehnert filed an administrative Complaint against Atty. Dennis L. Diño for violating the lawyer's oath and the Code of Professional Responsibility. He claimed that Atty. Diño violated Batas Pambansa Blg. 22 and prayed that the latter be permanently disbarred. The complainant claimed that an Information was filed against Atty. Diño and a Warrant of Arrest was issued against him. However, they were unable to located Atty. Diño at his residential addresses and office address. Thus, considering Atty. Diño hiding to evade arrest.

The Investigating Commissioner found Atty. Diño guilty of violating Canon 1, Rule 1.01 of the Code of Professional Responsibility by issuing post-dated check in favor of Lehnert which were subsequently dishonored. She recommended that Atty. Diño be suspended from the practice of law for two years since his acts of evading arrest and failing to participate in Administrative proceedings gave the impression that he was probably guilty.

ISSUE:

Whether or not Atty. Diño violated the Code of Professional Responsibility. (YES)

RULING:

This Court continues to state that the issuance of worthless checks constitutes gross misconduct and violates Canon 1 of the Code of Professional Responsibility, which mandates all members of the bar "to obey the laws of the land and promote respect for law." Issuance of worthless checks also violates Rule 1.01 of the Code which mandates that "a lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct."

In the present case, Atty. Diño issued a worthless check. Therefore, he violated the law and the Code of Professional. The Court suspended Atty. Diño from the practice of law for two years.

a. Canons 7 to 9

RET. JUDGE VIRGILIO ALPAJORA, *Complainant,* -versus- ATTY. RONALDO ANTONIO CALAYAN, *Respondent.*
A.C. No. 8208, EN BANC, January 10, 2018, GESMUNDO, *J.*

When lawyers, in the performance of their duties, act in a manner that prejudices not only the rights of their client, but also of their colleagues and offends due administration of justice, appropriate disciplinary measures and proceedings are available.

The Court is mindful of the lawyer's duty to defend his client's cause with utmost zeal. However, professional rules impose limits on a lawyer's zeal and hedge it with necessary restrictions and qualifications. The filing of cases by Atty. Calayan against the adverse parties and their counsels manifests his malice in paralyzing the lawyers from exerting their utmost effort in protecting their client's interest.

In Almacen, it 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 and that these criticisms are subject to a condition –* ***bona fide, and shall not spill over the walls of decency and propriety.***

FACTS:

Prior to this case, an intra-corporate case was filed before the Regional Trial Court of Lucena City presided by Judge Adolfo Encomienda, but was later on re-raffled to Judge Virgilio Alpajora (Judge Alpajora). Atty. Ronaldo Calayan (Atty. Calayan) was President and Chairman of the Board of Trustees of Calayan Educational Foundation, Inc. (CEFI). He signed and filed pleadings as "Special Counsel *pro se*" for himself. Thereafter, Judge Alpajora issued an **Omnibus Order** for the creation of a management committee and the appointment of its members. That Order prompted the filing of the administrative case against the Judge Alpajora – order was not acceptable to Atty. Calayan because he knew in effect, he, together with his wife and daughter, would lose their positions as Chairman, Treasurer and Secretary, respectively, and as members of the Board of Trustees of the CEFI

Judge Alpajoraasserted 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.

Atty. Calayan, on the other hand, 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 CPR; (3) malicious and intentional delay in not terminating the pre-trial, 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.

The Investigating Commissioner concluded that Atty. Calayan 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. Investigating Commissioner finally noted that as a party directly involved in the subject intra-corporate controversy, it is duly noted that Respondent was emotionally affected by the ongoing case. His direct interest in the proceedings apparently clouded his judgment, on account of which he failed to act with circumspect in his choice of words and legal remedies. Such facts and circumstances mitigate Respondent's liability.

ISSUE:

Whether Atty. Calayan violated the aforementioned Canons of the CPR. (YES)

RULING:

When lawyers, in the performance of their duties, act in a manner that prejudices not only the rights of their client, but also of their colleagues and offends due administration of justice, appropriate disciplinary measures and proceedings are available such as reprimand, suspension or even disbarment to rectify their wrongful acts. In this case, Atty. Calayan has displayed conduct unbecoming of a worthy lawyer.

Atty. Calayan respondent did not deny filing several cases against opposing parties and their counsels. He explained that the placing of CEFI under receivership and directing the creation of a management committee and the continuation of the receiver's duties and responsibilities by virtue of the Omnibus Order spurred his filing of various pleadings and/or motions. It was in his desperation and earnest desire to save CEFI from further damage that he implored the aid of the courts.

The Court is mindful of the lawyer's duty to defend his client's cause with utmost zeal. However, professional rules impose limits on a lawyer's zeal and hedge it with necessary restrictions and qualifications. The filing of cases by Atty. Calayan against the adverse parties and their counsels manifests his malice in paralyzing the lawyers from exerting their utmost effort in protecting their client's interest.

As officers of the court, lawyers are duty-bound to observe and maintain the respect due to the courts and judicial officers. They are to abstain from offensive or menacing language or behavior before the court and must refrain from attributing to a judge motives that are not supported by the record or have no materiality to the case. Atty. Calayan has consistently attributed

unsupported imputations against the complainant in his pleadings. He also accused the complainant judge of being *in cahoots* and of having deplorable close ties with the adverse counsels; and that complainant irrefutably coached said adverse counsels. However, these bare allegations are absolutely unsupported by any piece of evidence. Thus, the Court finds respondent guilty of attributing unsupported ill-motives to complainant in violation of Canon 11.

> 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.
>
> xxx
>
> Rule 11.04. A lawyer shall not attribute to a Judge motives not supported by the record or have no materiality to the case.

It must be remembered that all lawyers are bound to uphold the dignity and authority of the courts, and to promote confidence in the fair administration of justice. It is the respect for the courts that guarantees the stability of the judicial institution; elsewise, the institution would be resting on a very shaky foundation.

Further, as regards his alleged misquotation, respondent argues that he should have been cited in contempt. He found justification in *Cortes vs. Bangalan*, to wit:

> The alleged offensive and contemptuous language contained in the letter-complaint was not directed to the respondent court. As observed by the Court Administrator, "what respondent should have done in this particular case is that he should have given the Court (Supreme Court) the opportunity to rule on the complaint and not simply acted precipitately in citing complainant in contempt of court in a manner which obviously smacks of retaliation rather than the upholding of a court's honor.
>
> A judge may not hold a party in contempt of court for expressing concern on his impartiality even if the judge may have been insulted therein. While the power to punish in contempt is inherent in all courts so as to preserve order in judicial proceedings and to uphold the due administration of justice, judges, however, should exercise their contempt powers judiciously and sparingly, with utmost restraint, and with the end in view of utilizing their contempt powers for correction and preservation not for retaliation or vindication.

As correctly pointed out by the Investigating Commissioner, the jurisprudence quoted precisely cautions a judge against citing a party in contempt, which is totally contradictory to the position of respondent. He misrepresented the text of a decision, in violation of the CPR.

Ironically, Atty. Calayan's indiscriminate filing of pleadings, motions, civil and criminal cases, and even administrative cases against different trial court judges relating to controversies involving CEFI, in fact, runs counter to the speedy disposition of cases. It frustrates the administration of justice. It degrades the dignity and integrity of the courts.

A lawyer does not have an unbridled right to file pleadings, motions and cases as he pleases. Limitations can be inferred from the following rules: Rule 71, Section 3 of the Rules of Court; Canons 1, 10 (Rule 10.03), Canon 12 (Rule 12.04) of the Code of Professional Responsibility.

Respondent justifies his filing of administrative cases against certain judges, including complainant, by relying on *In Re: Almacen (Almacen).* He claims that the mandate of the ruling laid down in *Almacen* was to encourage lawyers' criticism of erring magistrates.

In *Almacen*, 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 and that these criticisms are subject to a condition – bona fide, and shall not spill over the walls of decency and propriety.

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.

OLIVER FABUGAIS, *Complainant*, -versus- ATTY. BERARDO C. FAUNDO JR., *Respondent*.
A.C. No. 10145, FIRST DIVISION, June 11, 2018, DEL CASTILLO, *J.*

"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 IBP IC'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.

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, ribald humor.

FACTS:

This is a Complaint filed by complainant Oliver Fabugais (complainant) against Atty. Berardo C. Faundo, Jr. (respondent lawyer), for gross misconduct and conduct unbecoming of a lawyer for having allegedly engaged in illicit and immoral relations with his wife, AnnalizaLizel B. Fabugais (Annaliza).

In her SinumpaangSalaysay, then 10-year old girl Marie Nicole Fabugais (Marie Nicole), daughter of complainant, alleged that sometime in October 2006, she, along with her mother, Annaliza, Ate Mimi (Michelle Lagasca), and a certain Ate Ada (Ada Marie Campos), stayed in a house in Ipil, Zamboanga-Sibugay, that belonged to respondent lawyer, whom Marie Nicole referred to as "Tito Attorney." She narrated that 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 (either by respondent lawyer, or by her mother Annaliza), while her mother and respondent lawyer remained inside the room.

Because of these developments, complainant filed a case for the declaration of nullity of his marriage with Annaliza, with prayer for the custody of their minor children. In said case, respondent lawyer entered his appearance as collaborating counsel for Annaliza.

Complainant moreover narrated that, on February 17, 2007, while he was driving his motorcycle along the San Jose Road in Baliwasan, Zamboanga City, respondent lawyer, who was then riding in tandem in another motorcycle with his own driver, slowed down next to him (complainant) and yelled at him angrily, "Nah, cosa man?!" ("So, what now?!"); that he (complainant) also noticed that respondent lawyer kept following and shouting at him (complainant), and even challenged him to a fistfight, and threatened to kill him.

Complainant further alleged that respondent lawyer also harassed his sister on February 27, 2007 by chasing and trailing after her car.

In his Answer, 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, Ma. Eglinda L. Bantoto, sought out his help in this case, he told them that they could hide in his (respondent lawyer's) parents' house in Ipil.

Respondent lawyer claimed that the cordial relationship he had had with Annaliza could be traced to her being the stepdaughter of his (respondent lawyer's) late uncle, and also to her having been his former student at the Western Mindanao State University in Zamboanga City. Respondent lawyer insisted that he was incapable of committing the misconduct imputed to him for three simple reasons to wit: because he is a good father to his three children, because he is a respected civic leader, and because he had never been the subject even of a complaint with the police. He claimed that complainant filed the instant complaint simply "to harass him from practicing his legitimate profession, and for no other reason."

IBP Investigating Commissioner (IBP IC) noted that on the accusation that respondent lawyer had chased complainant in his motorcycle on February 17, 2007, this accusation had not been fully substantiated with convincing evidence. He opined that "there [was] doubt as to whether the incident did occur with the [respondent lawyer's] presence and participation. [Since] the motorcycles were moving fast and the parties were wearing helmets[, the] identity of respondent [lawyer] could not be [categorically] established." He likewise found no sufficient evidence to establish that respondent lawyer harassed complainant's sister.

However, the IBP IC found respondent lawyer to have acted inappropriately with Annaliza which created the appearance of immorality thus 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. IBP Board of Governors adopted and approved the findings and recommendation of the IBP IC.

ISSUE:

Whether the 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. (YES)

RULING:

SC rejects 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.

The Court agrees with the IBP's findings that the evidence presented by complainant upon chasing incident was insufficient to establish the fact that respondent lawyer had committed the alleged acts against the complainant and his sister.

Now, for the alleged immoral acts by respondent lawyer. "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 IBP IC'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, ribald humor.

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. It goes without saying moreover that it should not be exercised or asserted when a lesser penalty or sanction would accomplish the end desired. The Court believes that a one-month suspension from the practice of law, as recommended by the IBP, would suffice.

HELEN GRADIOLA, *Complainant*, -versus- ATTY. ROMULO A. DELES, *Respondent.*
A.C. No. 10267, FIRST DIVISION, June 18, 2018, DEL CASTILLO, *J.*

With respondent lawyer not yet in a position to factually dispute the accusations and defend himself, and considering that there was no established lawyer-client relationship at all between him and Atty. Mampang, albeit the latter acted for respondent lawyer's best interest, proceeding with the investigation of the administrative case against him would amount to a denial of a fair and reasonable opportunity to be heard.

The Court has consistently held that an attorney enjoys the legal presumption that he is innocent of charges against him until the contrary is proved, and that as an officer of the court, he is presumed to have performed his duties in accordance with his oath. "For the Court to exercise its disciplinary powers, the case against the respondent [lawyer] must be established by clear, convincing and satisfactory proof Indeed, considering the serious consequences of disbarment or suspension of a member of the Bar, the Court has consistently held that a clear preponderant evidence is necessary to justify the imposition of the administrative penalty."

"The burden of proof in disbarment and suspension proceedings always rests on the shoulders of the complainant."

FACTS:

Respondent Atty. Romulo A. Deles (respondent lawyer) was complainant Helen Gradiola's (Helen) counsel in a civil case then pending before the Court of Appeals (CA). Helen, however, alleged that respondent lawyer abetted the unauthorized practice of law by allowing Atty. Ernesto S. Araneta (Atty. Araneta) to do the legal research works and the preparation of various pleadings relative to the civil case. Moreover, Helen was "reassured" by both respondent lawyer and Atty. Araneta who averred that they have a "contact man" in the CA in Cebu City.

Helen was told that the CA in Cebu City had reconsidered its April 28, 2005 Decision, as she was shown a photocopy of a November 13, 2006 Resolution of the CA in Cebu City which, this time, declared her and her spouse as the owners of the four lots subject-matter of the said CA G.R. CV No. 63354. Helen added that respondent lawyer nonetheless cautioned that their adversaries in the case had appealed to the Supreme Court, hence they had to prepare their own "position paper" to support the appeal before this Court.

Atty. Araneta soon billed Helen for these expenses and issued her receipts for these payments which bore the signatures "Atty. Ernie/Ernesto Araneta." From May 2005 until October 26, 2006,

Helen paid this Atty. Araneta a total of P207,500.00. Helen claimed that this Atty. Araneta split the attorney's fees with respondent lawyer.

However, to her chagrin and dismay, Helen discovered that this Atty. Araneta had not only been disbarred from the practice of law; but worse, the aforementioned November 13, 2006 CA Resolution was a total fabrication, even as the "position paper" that was supposedly filed with this Court was an utter simulation. With this discovery, Helen went herself to the CA in Cebu City, and there found out that she and her husband had lost their case, as shown in a genuine copy of the February 10, 2006 CA Resolution, which denied their Motion for Reconsideration, as well as their Supplemental Manifestation in Support of their Motion for Reconsideration in said CA-G.R. CV No. 63354. And, even more distressing, the records likewise revealed that this genuine Resolution had become final and irrevocable thereby forever foreclosing their right to pursue further reliefs in the case.

The IBP issued its Order directing respondent lawyer to submit his Answer. In a Manifestation, John P. Deles (John), respondent lawyer's eldest son, informed the IBP, that about three weeks before receipt of the IBP's Order, his father suffered a stroke and underwent a brain surgery. John implored the IBP to hold in abeyance this administrative case until his father is finally able to physically and intelligently file an Answer to Helen's complaint. John claimed that at that time, his father could hardly move and could not talk.

The Investigating Commissioner, however, denied John's request and directed respondent lawyer to file his Answer. Atty. Carlito V. Mampang Jr. (Atty. Mampang) tendered the required Answer to the administrative complaint, which was signed by John, and not by respondent lawyer. Atty. Mampang qualified in the Answer that it was his friend John who secured his services pro bono. The counsel averred, that as of the date of filing the Answer, respondent lawyer, dependent on his children's help, could not communicate to explain his side as he remained in a vegetative' state, unable to speak, and had lost his motor skills.

On February 23, 2010, the Investigating Commissioner, Oliver A. Cachapero, recommended respondent lawyer's suspension from the practice of law for one year for violating Rule 9.01 of Canon 9, and Rule 10.1 and Rule 10.2 of Canon 10 of the Code of Professional Responsibility.

The IBP Board of Governors in Resolution No. XX-2013-511,21 adopted and approved the Investigating Commissioner's findings and recommendation.

ISSUE:

Whether respondent lawyer is administratively liable for violating Rule 9.01 of Canon 9, and Rule 10.1 and Rule 10.2 of Canon 10 of the Code of Professional Responsibility. (NO)

RULING:

While "Atty. Araneta" admitted of his involvement in a fraudulent scheme in defrauding litigants that included Helen, the Supreme Court cannot immediately conclude that respondent lawyer himself was likewise part of this racket that duped Helen. It must be stressed that, because of his medical condition, respondent lawyer could not yet explain his side. While indeed, an Answer was

filed, it was John who signed the same and not respondent lawyer. As such, the Court cannot consider respondent lawyer to have been adequately represented.

The Court noted that Atty. Mampang candidly declared that it was John who consulted him and sought his legal services, and, thus, it cannot be said that respondent lawyer voluntarily and intelligently accepted Atty. Mampang to represent him. Respondent lawyer, with his condition, could not even communicate with Atty. Mampang regarding the case at the time of filing of the Answer, which compelled the counsel to merely rely on the available documents. In effect, Atty. Mampang substituted his judgment for that of respondent lawyer.

With respondent lawyer not yet in a position to factually dispute the accusations and defend himself, and considering that there was no established lawyer-client relationship at all between him and Atty. Mampang, albeit the latter acted for respondent lawyer's best interest, proceeding with the investigation of the administrative case against him would amount to a denial of a fair and reasonable opportunity to be heard.

The Court has consistently held that an attorney enjoys the legal presumption that he is innocent of charges against him until the contrary is proved, and that as an officer of the court, he is presumed to have performed his duties in accordance with his oath. "For the Court to exercise its disciplinary powers, the case against the respondent [lawyer] must be established by clear, convincing and satisfactory proof Indeed, considering the serious consequences of disbarment or suspension of a member of the Bar, the Court has consistently held that a clear preponderant evidence is necessary to justify the imposition of the administrative penalty."

"The burden of proof in disbarment and suspension proceedings always rests on the shoulders of the complainant."

GERONIMO J. JIMENO, JR., *Complainant,* -versus- ATTY. FLORDELIZA M. JIMENO, *Respondent.*

A.C. No. 12012, SECOND DIVISION, July 2, 2018, PERLAS-BERNABE, *J.*

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.*

Atty. Flordelizahave allowed herself to become a party to a document which contained falsehood and/or inaccuracies in violation of her duties as a lawyer, namely: (a) to refrain from doing or consenting to any falsehood; (b) to employ only fair and honest means to attain the lawful objectives of his client; and (c) to refrain from allowing his client to dictate the procedure in handling the case.

FACTS:

Geronimo Jimeno, Jr. (Geronimo Jr.) discovered that Atty. FlordelizaJimeno (Atty. Flordeliza), who is his cousin, sold the property of his parents, the late Spouses Geronimo Jimeno, Sr. (Geronimo Sr.) and Perla de Jesus Jimeno (Perla) located in San Jose, Quezon City (Malindang property) through a Deed of Absolute Sale dated September 8, 2005 executed by Atty. Flordelza as attorney-in-fact by Geronimo Sr.

Geronimo Jr. claimed that the subject deed was falsified considering that: (*a*) the same bore the signature of Perla who had already passed away on May 19, 2004, or more than a year prior to the execution thereof; (*b*) Geronimo Sr. was erroneously described as married to Perla, when he was already a widower at the time; (*c*) Geronimo Sr. was made to appear as the absolute and registered owner in fee simple of the property when the same is co-owned by him and his ten (10) children (Jimeno children); and (*d*) Geronimo Sr.'s residence and postal address was stated as "421 (formerly 137) Mayon Street, Quezon City," when it should have been "10451 Bridgeport Road, Richmond, British Columbia" as indicated in the Special Power of Attorney he executed, authorizing Atty. Flordeliza to administer and sell his real properties in the Philippines. Geronimo Jr. likewise alleged that respondent mentioned "so many unnecessary and un-called for matters like his father having allegedly illegitimate children" when his lawyer requested for copies of the titles and other documents respecting the properties covered by the SPA, in violation of her duty to keep in confidence whatever information were revealed to her by the late Geronimo Sr. in the course of their professional relationship (lawyer-client privilege).

In her defense, Atty. Flordeliza claimed that: (*a*) she was not the one who prepared or caused the preparation of the subject deed and that all the necessary documents for the sale of the Malindang property, including the subject SPA and the Deed of Waiver of Rights and Interests dated executed by the Jimeno children in their parents' favor, were merely transmitted by her cousin and respondent's sister, Lourdes Jimeno-Yaptinchay (Lourdes), from Canada; (*b*) the sale of the Malindang property was with the consent of all the Jimeno children; and (*c*) she merely signed the subject deed in good faith before endorsing the same to the buyer. Atty. Flordeliza further claimed that the contents of her email dated April 24, 2012 to complainant's lawyer are "privileged communication" which are relevant to the subject of inquiry, and they did not arise from the confidences and secrets of the late Geronimo Sr. She challenged complainant's invocation of Canon 21, contending that the matter is personal to a client, and is intransmissible in character.

IBP-CBD, in its report and recommendation, found Atty. Flordeliza to have allowed herself to become a party to a document which contained falsehood and/or inaccuracies in violation of her duties as a lawyer, namely: (*a*) to refrain from doing or consenting to any falsehood; (*b*) to employ only fair and honest means to attain the lawful objectives of his client; and (*c*) to refrain from allowing his client to dictate the procedure in handling the case. IBP Board of Governors adopted IBP-CBD's recommendation. According to Director Esguerra, Atty. Flordeliza's dishonest acts in relation to the subject SPA and the subject deed constitute blatant transgressions of her duties as a lawyer under Rule 1.01 of the CPR.

ISSUE:

Whether or not Atty. Flordeliza should be held administratively liable for the acts complained of. (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. 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.

Pertinent to this case are Rule 1.01 of Canon 1, Rule 15.07 of Canon 15, and Rule 19.01 of Canon 19, which provide:

> 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.
>
> xxx xxxxxx
>
> CANON 15 — A lawyer shall observe candor, fairness and loyalty in all his dealings and transactions with his clients.
>
> xxx xxxxxx
>
> Rule 15.07 — A lawyer shall impress upon his client *compliance with the laws* and the principles of fairness.
>
> xxx xxxxxx
>
> 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 x xx.

Atty. Flordeliza's acts in relation to the subject SPA and the subject deed constitute blatant transgressions of her duties as a lawyer, as ordained by Rule 1.01 of Canon 1 of the CPR, which engraves an overriding prohibition against ***any*** form of misconduct. Additionally, the Court finds that she fell short of her duty to **impress upon her client compliance with the pertinent laws** in relation to the subject transaction. While seemingly aware of the demise of Perla that rendered the Malindang property a co-owned property of Geronimo Sr. and the Jimeno children, instead of advising the latter to settle the estate of Perla to enable the proper registration of the property in their names preliminary to the sale to Aquino, she voluntarily signed the subject deed, as attorney-in-fact of Geronimo Sr., despite the patent irregularities (those contended by Geronimo Jr.) in its execution.

As stated by the IBP-CBD, Atty. Flordeliza have allowed herself to become a party to a document which contained falsehood and/or inaccuracies in violation of her duties as a lawyer, namely: (*a*) to refrain from doing or consenting to any falsehood; (*b*) to employ only fair and honest means to attain the lawful objectives of his client; and (*c*) to refrain from allowing his client to dictate the procedure in handling the case

JILDO A. GUBATON, *complainant*, -versus- ATTY. AUGUSTUS SERFAIN D. AMADOR, *respondent.*
A.C. No. 8962, SECOND DIVISION, July 9, 2018, PERLAS-BERNABE, *J.*

Finally, it should be clarified that while the information supplied by complainant and Bernadette's house helper and secretary about the alleged illicit affair constitute hearsay, the same should not be completely disregarded. ***In Re: Verified Complaint of Umali, Jr. v. Hernandez:***

> *It was emphasized that to satisfy the substantial evidence requirement for administrative cases,* ***hearsay evidence should necessarily be supplemented and corroborated by other evidence that are not hearsay****.*

Given that the purported hearsay are supplemented and corroborated by other evidence that are not hearsay, the Court finds no cogent reason not to apply the same pronouncement to this particular case.

Based on jurisprudence, extramarital affairs of lawyers are regarded as offensive to the sanctity of marriage, the family, and the community. When lawyers are engaged in wrongful relationships that blemish their ethics and morality, the usual recourse is for the erring attorney's suspension from the practice of law, if not disbarment. This is because possession of good moral character is both a condition precedent and a continuing requirement to warrant admission to the Bar and to retain membership in the legal profession.

FACTS

Complainant alleged that respondent, was having an illicit romantic relationship with his wife, Bernadette. He averred that while working in the USA, when he discovered the illicit relationship. Complainant's house helper informed him through a phone call that a man whom she knows to be "Fiscal Amador" often visits Bernadette. The house helper also told him that respondent spends nights at their house and stays with Bernadette in their bedroom. When complainant called Bernadette's dental clinic to verify the information, it was the secretary who took his call. Upon inquiry, the latter confirmed that respondent and Bernadette have been carrying on an illicit affair. Complainant returned to the country. He alleged that Bernadette wrote love letters to respondent. Complainant likewise alleged that he personally saw respondent and Bernadette together in various places. At one instance, he saw them kissing while inside a vehicle; when he approached to confront them, respondent ran away. The illicit affair of respondent and Bernadette was known to other people as well.

In defense, respondent denied all the allegations against him. He claimed that he was merely acquainted with Bernadette and they would only see each other on various occasions and social gatherings.

The Commission on Bar Discipline of the IBP issued a Report and Recommendation recommending the dismissal of the affidavit-complaint for insufficiency of evidence and that the information supplied by the complainant, the house helper, and the clinic secretary were purely hearsay. However, the IBP Board of Governors reversed the Report and Recommendation, and instead suspended responded from the practice of law for 2 years.

ISSUE

Whether or not grounds exist to hold respondent administratively liable. (YES)

RULING

Respondent should be held administratively liable. In this case, substantial evidence exist to prove complainant's claim that respondent had illicit affairs with Bernadette and hence, should be adjudged guilty of gross immorality.

As per complainant's own account, he actually saw respondent and Bernadette together on various intimate occasions. In fact, he attempted to confront them at one time when he saw them kissing inside a vehicle, although respondent was able to evade him. The Court is inclined to believe that complainant's imputations against respondent are credible, considering that he had no ill motive to accuse respondent of such a serious charge — much more a personal scandal involving his own wife — unless the same were indeed true.

Moreover, complainant's sister, described to complainant that while the latter was in the USA, respondent would often visit Bernadette and spend the night in their residence and likewise recounted that whenever the two of them arrived home in one vehicle, they would kiss each other before alighting therefrom.

Finally, it should be clarified that while the information supplied by complainant and Bernadette's house helper and Bernadette's clinic secretary about the alleged illicit affair constitute hearsay, the same should not be completely disregarded. **In Re: Verified Complaint of Umali, Jr. v. Hernandez:**

> It was emphasized that to satisfy the substantial evidence requirement for administrative cases, **hearsay evidence should necessarily be supplemented and corroborated by other evidence that are not hearsay**.

Given that the purported hearsay are supplemented and corroborated by other evidence that are not hearsay, the Court finds no cogent reason not to apply the same pronouncement to this particular case.

For his part, respondent only proffered a bare denial of the imputed affair. He insists that he was merely acquainted with Bernadette and that they would only see each other during social gatherings or by pure accident. The thrust of his denial was that, although they would see each other on occasion, such meetings were innocent. Suffice it to say that "denial is an intrinsically weak defense. In any event, the Court observes that the alleged "accidental" and "innocent" encounters of respondent and Bernadette are much too many for comfort and coincidence. Such encounters actually buttress the allegations of the witnesses that they carried on an illicit affair. All told, the Court finds that substantial evidence — which only entail "evidence to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise" — exist to prove complainant's accusation of gross immorality against respondent.

Based on jurisprudence, extramarital affairs of lawyers are regarded as offensive to the sanctity of marriage, the family, and the community. When lawyers are engaged in wrongful relationships that

blemish their ethics and morality, the usual recourse is for the erring attorney's suspension from the practice of law, if not disbarment. This is because possession of good moral character is both a condition precedent and a continuing requirement to warrant admission to the Bar and to retain membership in the legal profession. Under the Code of Professional Responsibility:

> **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.

The Court sees fit to impose on respondent a penalty of suspension from the practice of law for a period of one (1) year.

PENINAH D.F. WASHINGTON, *complainant*, -versus- ATTY. SAMUEL D. DICEN, *respondent.*
A.C. No. 12137, FIRST DIVISION, July 9, 2018, DEL CASTILLO, *J.*

Rule 8.01, Canon 8 of the CPR provides:

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

A thorough review of the records clearly shows that Atty. Dicen had resorted to the use of derogatory language in his pleadings filed before the IBP in order to rebut the allegations hurled against him.

For instance, in his Manifestation, Atty. Dicen referred to complainant as a "lunatic" who was on a "crazy quest for revenge" against him. In the same pleading, Atty. Dicen also called complainant "a puppet and a milking cow" of a certain Martin, who he suggested was complainant's lover in the Philippines while her husband was in the United States. To make matters worse, Atty. Dicen continued his personal tirades against complainant in his Position Paper

The totality of these circumstances leads the Court to inevitably conclude that Atty. Dicen violated Rule 8.01, Canon 8 of the CPR for his use of language that not only maligned complainant's character , but also imputed a crime against her, i.e., that she was committing adultery against her husband who was, at the time, living in the United States.

FACTS

Complainant alleged that, she went to her house in Dumaguete City, then occupied by the family of her niece, Roselyn, in order to perform necessary repairs thereon.The repairs, however, did not push through as planned because the police arrived in the premises and arrested complainant and her companions. Complainant claimed that it was Atty. Dicen, Roselyn's uncle and her first cousin, who had ordered her to be arrested for trespassing even though she was the lawful owner of the property in question. In his defense, Atty. Dicen strongly denied that he had given the police officers an order to arrest complainant, as he had no power or authority to do so. He argued that

complainant was arrested after she was caught in flagrante delicto committing acts of coercion by removing the sheet roofing of Roselyn's house to force the latter and her family to move out.

The IBP-CBD found no merit in the allegations of unethical practice of law against Atty. Dicen Nevertheless, it recommended that Atty. Dice be admonished "to be gracious courteous, dignified, civil, and temperate (even if forceful) in his language." The IBP pointed to: (a) Atty. Dicen's Manifestation where he described complainant's actions as having **"no sane purpose,"** and meant only to **"satisfy her crazy quest for revenge,"** and even characterized complainant as a **"lunatic;"** and (b) Atty. Dicen's Position Paper where he stated:

> It is the observation of the respondent that complainant is no longer thinking on her own but has become fixated on her illicit and immoral, if not adulterous relationship with her ex-husband, while current husband is in the United States.

The IBP Board of Governors resolved to adopt and approve the Report and Recommenation of the IBP-CBD to admonish Atty. Dicen.

ISSUE

Whether or not Atty. Dicen should be held administratively liable for violating Rule 8.01, Canon 8 of the Code of Professional Responsibility (CPR) for his use of intemperate language in his pleadings. (YES)

RULING

Canon 8 of the CPR, in particular, instructs that a lawyer's arguments in his pleadings should be gracious to both the court and his opposing counsel, and must be of such words as may be properly addressed by one gentleman to another. "The language vehicle does not run short of expressions which are emphatic but respectful, convincing but not derogatory, illuminating but not offensive." Rule 8.01, Canon 8 of the CPR provides:

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

A thorough review of the records clearly shows that Atty. Dicen had resorted to the use of derogatory language in his pleadings filed before the IBP in order to rebut the allegations hurled against him.

For instance, in his Manifestation, Atty. Dicen referred to complainant as a "lunatic" who was on a "crazy quest for revenge" against him. In the same pleading, Atty. Dicen also called complainant "a puppet and a milking cow" of a certain Martin, who he suggested was complainant's lover in the Philippines while her husband was in the United States. To make matters worse, Atty. Dicen continued his personal tirades against complainant in his Position Paper where he stated that:

> It is the observation of the respondent that complainant is no longer thinking on her own but has become fixated on her illicit and immoral, if not adulterous relationship with her ex-husband, while current husband is in the United States.

The totality of these circumstances leads the Court to inevitably conclude that Atty. Dicen violated Rule 8.01, Canon 8 of the CPR for his use of language that not only maligned complainant's character , but also imputed a crime against her, i.e., that she was committing adultery against her husband who was, at the time, living in the United States.

Indeed, Atty. Dicen could have simply stated the ultimate facts relative to complainant's allegations against him, explained his participation (or the lack of it) in the latter's arrest and detention, and refrained from resorting to name-calling and personal attacks in order to get his point across. After all, "though a lawyer's language may be forceful and emphatic, it should always be dignified and respectful , beffitting the dignity of the legal profession. The use of intemperate language and unkind ascriptions has no place in the dignity of judicial forum."

Atty. Samuel D. Dicen is found GUILTY of violating Rule 8.01, Canon 8 of the Code of Professional Responsibility. He is ADMONISHED to refrain from using language that is abusive, offensive or otherwise improper in his pleadings.

ANGELITO CABALIDA, *Petitioner,* -versus –ATTY. SOLOMON A. LOBRIDO, JR. and ATTY. DANNY L. PONDEVILLA, *Respondents.*
A.C. No. 7972, FIRST DIVISION, October 3, 2018, LEONARDO- DE CASTRO, *C.J.*

It is a fundamental rule that official duty is presumed to have been performed regularly, thus it is presumed that the court order has been furnished accordingly to Atty. Lobrido. Atty. Lobrido's bare denial of knowledge of the negotiations for and the submission of the Memorandum of Agreement must fail. ***His failure to represent Cabalida in the negotiations for the Memorandum of Agreement shows gross neglect and indifference to his client's cause.***

Atty. Pondevilla's actions violated Canon 8.02 of the Code of Professional Responsibility when he negotiated with Cabalida ***without consulting Atty. Lobrido.*** *This failure of Atty. Pondevilla, whether by design or because of oversight, is an inexcusable violation of a canon of professional ethics and in* ***utter disregard of a duty owing to a colleague.***

FACTS:

Petitioner Angelito Cabalida believes that he had been wronged by both respondents-lawyers on account of which he lost a piece of real estate property. Cabalida availed the legal services of herein respondent Atty. Solomon Lobrido (Atty. Lobrido) for purposes of representing him in a civil action for Ejectment against Alpiere and Salili. For their part, Alpiere and Salili availed the legal services of herein respondent Atty. Danny L. Pondevilla.

Cabalida asserts in his complaint that respondents colluded to dispossess him of his property. Atty. Pondevilla was already a member of Lobrido's law firm as early as their initial meeting for the amicable settlement of Civil Case No. 30337. In the said meeting, respondents convinced Cabalida that the best course of action for him was to obtain a loan in order to come up with P250,000.00 as payment to Alpiere. This was made even after the respondents learned that Cabalida was in communication with a prospective buyer who was willing to purchase the property for P1,300,000.00. The complaint also provides that Atty. Lobrido did not assist Cabalida when he entered into the Memorandum of Agreement. Atty. Lobrido also made it appear that his withdrawal

as counsel was due to Cabalida's insistence when it was Atty. Lobrido himself who advised Cabalida to look for a new counsel as his work was already over.

Thus, Cabalida claims that the unethical acts of respondents clearly violated the Code of Ethics. Respondents took advantage of their knowledge of the law as against him who was not even a high school graduate.

On the other hand, Atty. Lobrido denies that Atty. Pondevilla joined his law firm as early as the initial meeting for the amicable settlement of Civil Case No. 30337. Atty. Lobrido also avers that he was not consulted nor was a privy to the Memorandum of Agreement. He learned of the Memorandum of Agreement only after it was submitted to the MTCC. Finally, Atty. Lobrido states that Cabalida consented to his withdrawal as counsel because it was for reasons of propriety since Atty. Pondevilla was about to join their law firm. Atty. Lobrido has not kept track of the case thereafter.

Atty. Pondevilla professed that the idea of mortgaging the property came from Cabalida and his brokers. As to the circumstances surrounding the Memorandum of Agreement, Atty. Pondevilla avers that Cabalida fully understood its contents and that it has been notarized by another lawyer. Finally, Atty. Pondevilla claims that he joined Atty. Lobrido's law office only after he withdrew as counsel of Alpiere and Salili.

Comm. Reyes recommended that both respondents be meted a penalty of six (6) months suspension for violation of the Code of Professional Responsibility. IBP Board of Governors reversed and dismissed the case. Cabalida filed a Motion for Reconsideration and prayed for a harsher penalty of suspension or disbarment with payment of damages amounting to PhP1,000,000.00. IBP denied the Motion for Reconsideration. Hence, this appeal.

ISSUE:

Whether the Board of Governors of the IBP gravely erred in exonerating respondents despite the commission of acts violative of the Code of Professional Responsibility. (YES)

RULING:

After a thorough review of the records, the Court adopts the findings of Comm. Reyes but modifies the penalty to be imposed on one of the respondents.

At the outset, the records do not support Cabalida's allegations that respondents colluded to deprive him of his property. Cabalida failed to convince that respondents were colleagues as early as the initial meeting for the amicable settlement. While Cabalida fully recounted his encounter with Pondevilla which led to the creation of the Trust Agreement and the Memorandum of Agreement, the participation of Atty. Lobrido has always been narrated vaguely. Cabalida also submitted an envelope bearing the office address of Atty. Lobrido which included Atty. Pondevilla as one of the partners. The envelope is however dated April 13, 2009 which is almost **three years after Atty. Lobrido withdrew as Cabalida's counsel**. **No conflict of interest can thus be attributed** to respondents during this period.

The MTCC Order dated May 17, 2006 however bares the participation of the respondents in the Memorandum of Agreement.

It is a fundamental rule that official duty is presumed to have been performed regularly, thus it is presumed that the aforementioned court order has been furnished accordingly to Atty. Lobrido. Atty. Lobrido's bare denial of knowledge of the negotiations for and the submission of the Memorandum of Agreement must fail. **His failure to represent Cabalida in the negotiations for the Memorandum of Agreement shows gross neglect and indifference to his client's cause.** Hence, there was abject failure to observe due diligence. Atty. Lobrido has therefore violated Canon 18 of the Code of Professional Responsibility and Canon 18.03.

The Court fully adopts the findings of Comm. Reyes that Atty. Lobrido failed to render proper legal assistance to his client and imposes upon him six (6) months suspension from the practice of law.

On the other hand, the MTCC Order also reflects that Atty. Pondevilla prepared the Memorandum of Agreement. The uncontroverted facts of the decision of the MTCC dated September 17, 2007 further suggests that Atty. Pondevilla actively participated in the negotiation of the Memorandum of Agreement.

Atty. Pondevilla's participation in the negotiation for the Memorandum of Agreement ensued when he relayed Alpiere's terms to Cabalida. The same terms that Pondevilla relayed to Cabalida were then it faithfully stated in the Memorandum of Agreement. Thus, Pondevilla cannot dilute his role in the creation of the Memorandum of Agreement to that of a spectator. The notary public's presence also does not remedy the situation especially that his obligation is only towards ensuring the authenticity and due execution of the instrument. Atty. Pondevilla knew that Atty. Lobrido was Cabalida's counsel thus **he should have, at the very least, given notice to Atty. Lobrido prior to submission of the Memorandum of Agreement to court.**

Atty. Pondevilla's actions violated Canon 8.02 of the Code of Professional Responsibility when he negotiated with Cabalida **without consulting Atty. Lobrido.** This failure of Atty. Pondevilla, whether by design or because of oversight, is an inexcusable violation of a canon of professional ethics and in **utter disregard of a duty owing to a colleague.**

For these infractions, the Court imposes upon Atty. Pondevilla a penalty of six months suspension from the practice of law in line with jurisprudence.

On another point, by his admissions, Atty. Pondevilla was engaged in the practice of law while also employed as a City Legal Officer. Atty. Pondevilla thus engaged in the **unauthorized practice of law**, in violation of Section 7 (b) (2) of Republic Act No. 6713, otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees, in relation to Memorandum Circular No. 17, series of 1986, which prohibits government officials or employees from engaging in the private practice of their profession unless: 1) **they are authorized by their department heads**, and 2**) that such practice will not conflict or tend to conflict with their official functions.**

A penalty of another six months suspension from the practice of law is further imposed on Atty. Pondevilla, thus bringing his suspension to a period of one year.

b. Integrated Bar of the Philippines (Rule 139-A)

MANUEL B. TROVELA, *Complainant*, -versus- MICHAEL B. ROBLES, ASSISTANT CITY PROSECUTOR; EMMANUEL L. OBUNGEN, PROSECUTOR II; JACINTO G. ANG, CITY PROSECUTOR; CLARO A. ARELLANO, PROSECUTOR GENERAL; AND LEILA M. DE LIMA, FORMER SECRETARY, DEPARTMENT OF JUSTICE, *Respondents*.
A.C. NO. 11550, THIRD DIVISION, June04, 2018, BERSAMIN*, J.*

The Integrated Bar of the Philippines has no jurisdiction to investigate government lawyers charged with administrative offenses involving the performance of their official duties.

FACTS:

Michael B. Trovela criminally charged Katigbak, Salonga and Reyes with estafa under Article 315 of the RPC. In his resolution, Assistant Prosecutor of Pasig City Robles recommended the dismissal of the complaint for insufficiency of evidence. Prosecutor II Emmanuel L. Obuñgen and City Prosecutor Jacinto G. Ang, both of Pasig City, approved the recommendation of the dismissal. The complainant then filed his petition for review to appeal the dismissal of his complaint. Former Prosecutor General Claro A. Arellano issued his resolution finding no reversible error in the resolution of Robles. The complainant moved for reconsideration, but his motion was denied by Secretary De Lima.

This prompted complainant to initiate a disbarment proceeding against respondents on the ground that the dismissal of the case is contrary to long standing jurisprudence holding that other proof and failure to account, upon demand, for funds or property held in trust is circumstantial evidence of misappropriation. The inordinate delays on the part of respondents Arellano and De Lima in their separate resolutions are merely anchored on the grossly erroneous findings of the OPCP which negate their allegations that they actually examined the records of the case which indicates their lack of resolve to see that justice is done. Complainant argues that respondents had not only reneged on their sworn duty to uphold the laws of the land, basically as lawyers and as prosecutors or dispensers of justice, which compromised the efficient administration of justice, but they also committed gross violations of certain laws themselves.

ISSUE:

Whether respondents should be administratively disciplined by the Integrated Bar of the Philippines. (NO)

RULING:

The administrative case should be dismissed. The acts complained of undoubtedly arose from the respondents' performance or discharge of official duties as prosecutors of the Department of Justice. Hence, the authority to discipline respondents Robles, Obuñgen, Ang and Arellano exclusively pertained to their superior, the Secretary of Justice. In the case of Secretary De Lima, the authority to discipline pertained to the President. In either case, the authority may also pertain to the Office of the Ombudsman, which similarly exercises disciplinary jurisdiction over them as public officials pursuant to Section 15, paragraph 1, of Republic Act No. 6770 *(Ombudsman Act of* 1989). Indeed, the accountability of respondents as officials performing or discharging their official

duties as lawyers of the Government is always to be differentiated from their accountability as members of the Philippine Bar. The IBP has no jurisdiction to investigate them as such lawyers.

ACHERNAR B. TABUZO, *Complainant*, -versus- ATTY. JOSE ALFONSO M. SANTOS, *Respondent*.
A.C. No. 12005, THIRD DIVISION, July 23, 2018, GESMUNDO,J.

In resolving the issue, it is important to answer the question if IBP is strictly a public office or a private institution. Based on the IBP's peculiar manner of creation, it now becomes reasonable for the Court to conclude that ***the IBP is a public institution.*** *Pursuant to the by-laws of the IBP,* ***only private practitioners are allowed to occupy any position in its organization.***

The complainant violated Canon 8 of the Code of Professional Responsibility. ***The filing of baseless and unfounded administrative complaints against fellow lawyers is antithetical to conducting oneself with courtesy, fairness, and candor.***

FACTS:

The controversy stemmed from an administrative complaint filed by Lucille G. Sillo (Sillo) against complainant before the Integrated Bar of the Philippines (IBP). The case was assigned to Atty. Jose Alfonso M. Santos (Respondent), who was the commissioner of the IBP at that time. The respondent issued a Report and Recommendation recommending that complainant be reprimanded for the impropriety of talking to Sillo, without her counsel, prior to the calling of their case for mediation conference, and for the abusive, offensive, or improper language in the pleadings she filed in the said case. The report was adopted and approved by the IBP Board of Governors.

Atty. Achernar Tabuzo (Complainant) filed this administrative complaint against the respondent alleging : (1) **that he violated the Constitution, the Rules of Procedure of the Commission on Bar Discipline, Rule 139-B of the Rules of Court and the Code of Conduct and Ethical Standards for Public Officials and Employees;** (2) **that respondent also violated Canons 1 and 3 of the Code of Judicial Conduct and the Guidelines for Imposing Lawyer Sanctions of the Commission on Bar Discipline;** (3) **that respondent is guilty of nonfeasance in deliberately refusing to institute disciplinary action for serious violations of duties owed to the Court and the Legal Profession committed by a lawyer, despite repeated notice, and contrary to the mandate of his office and the Integrated Bar of the Philippines;** and (4) **gross ignorance of the law on the part of the respondent.**

The IBP-Commission on Bar Discipline recommended the dismissal of the complaint for lack of merit which the IBP Board of Governors adopted.

ISSUE:

(1) Whether or not respondent may be held administratively liable in the same manner as judges and other government officials (NO)

(2) Whether or not complainant violated any of the Canons in the Code of Professional Responsibility (YES)

RULING:

(1) In resolving the issue, it is important to answer the question if IBP is strictly a public office or a private institution. To answer this question, it is significant to discuss the nature and background of the IBP. Both the 1935 and 1973 Constitutions gave the Court and the Legislature the concurrent power to regulate the practice of law. However, in Section 1 of RA 6397, the Congress acknowledged the Court's rightful and primary prerogative to adopt measures to raise the standard of the legal profession. Following this, the Court had ordained the Integration of the Philippine Bar. The President, exercising its legislative power, issued PD No. 181 which gave IBP corporate attributes only subject to the Court's supervision. It was only in the 1987 Constitution which acknowledged the "integrated bar" as one of the subjects of the Supreme Court's power to promulgate rules relative to the practice of law that cemented the IBP's existence as a juridical person. Based on the IBP's peculiar manner of creation, it now becomes reasonable for the Court to conclude that **the IBP is a public institution.**

Pursuant to the by-laws of the IBP, **only private practitioners are allowed to occupy any position in its organization.** It follows that IBP Commissioners, being officers of the IBP, are private practitioners performing public functions delegated to them by this Court and in other words, they are not public officers thus, it follows that they cannot be held liable for violating the Constitution or Code of Judicial Conduct since they are not members of the judiciary nor they are officers of a quasi-judicial officers. In addition, they cannot be held administratively liable for malfeasance, nonfeasance, and misfeasance since they are not employed with the government. Nonetheless, the Commissioner and other IBP Officers may be held administratively liable for violation of the rules promulgated by the court. It can be concluded that **IBP officers may be held administratively liable only in relation to their functions as IBP officers but not as government officials.**

(2) The complainant violated Canon 8 of the Code of Professional Responsibility which provides that:

CANON 8 – A lawyer shall conduct himself with **courtesy**, **fairness** and candor toward his professional colleagues, and shall avoid harassing tactics against opposing counsel.

In this case, **the filing of baseless and unfounded administrative complaints against fellow lawyers is antithetical to conducting oneself with courtesy, fairness, and candor.**

i. Membership and dues
3. To the courts (Canons 10 to 13)

In Re: G.R. No. 157659 "ELIGIO P. MALLARI vs. GOVERNMENT SERVICE INSURANCE SYSTEM and the PROVINCIAL SHERIFF OF PAMPANGA."
A.C. No. 11111, EN BANC, January 10, 2018, JARDELEZA, *J.*

A lawyer must never be blinded by the cause of his client at the expense of justice, even if the latter turned out to be himself. He must never overlook that as officer of the court, he is primarily called upon to assist in the administration of justice. They are obliged to observe the rules of procedure and not to misuse them to defeat the ends of justice.

Mallari's filing of various petitions and motions to continuously stall the execution of the extrajudicial foreclosure contravened Rule 10.03, Canon 10 of the CPR which he enjoins a lawyer to "observe the rules of procedure and x xx not to misuse them to defeat the ends of justice." By his dilatory moves, he further breached and dishonored his Lawyer's Oath. Further, the filing of another action concerning the same subject matter, in violation of the doctrine of res judicata, runs contrary to Canon 12 of the CPR, which requires a lawyer to exert every effort and consider it his duty to assist in the speedy and efficient administration of justice. With this, Mallari violated not only the said Canon, but also the lawyer's mandate "to delay no man for money or malice."

FACTS:

In 1968, Mallari obtained loans from the Government Service Insurance System GSIS amounting to P34,000 and were secured by mortgages over two parcels of land registered under his and his wife's names. Eventually, Mallari was unable to meet his obligations which prompted GSIS to apply for extrajudicial foreclosure of the mortgage. However, Mallari was able to stall this by requesting for a final computation of his outstanding account and persuading the Sheriff to hold the publication of the foreclosure notice in abeyance. The GSIS, on two separate dates, comply with Mallari's request, but the latter still failed to settle prompting the GSIS to commence the extrajudicial foreclosure proceedings.

On August 22, 1986, respondent filed a complaint for injunction with application for preliminary injunction against the GSIS and the Provincial Sheriff of Pampanga and was docketed as **Civil Case No. 7802** which was decided on his favor. Upon appeal, the **CA reversed the RTC on March 27, 1996**. This Court, in G.R. No. 124468, denied respondent's petition for review on *certiorari* and the motion for reconsideration. As a result, the **CA Decision dated March 27, 1996 became final and executory**, rendering unassailable the extrajudicial foreclosure and auction 6, and the issuance of titles in the name of the GSIS.

To stall the execution of the extrajudicial foreclosure, Mallari, in several dates, requested for an extension of time to vacate the properties, a case for consignation with a prayer for writ of preliminary injunction or temporary restraining order, but was dismissed on the ground of *res judicata*, and motions to hold GSIS, *et al.* in contempt of court, but such were denied

Respondent brought the matter before the SC in G.R. No. 157659, where It affirmed the CA's Decision. The Court held that the issuance of writ of possession in an extrajudicial foreclosure is purely ministerial. Also, Mallari, as a lawyer, should have known that, as a *non-*

redeeming mortgagor, he had no more right to challenge the issuance of the writ of execution. **Thus, his actions can only be tainted by bad faith**. It also agreed with the CA that the petition before it is "**part of the dilatory tactics x xx to stall the execution of a final and executory decision in Civil Case No. 7802 which has already been resolved with finality by no less than the highest tribunal of the land.**" Thus, the Court deemed it proper to direct the IBP-CBD to conduct an investigation on respondent.

The IBP-CBD found that the means employed by respondent are dilatory moves to delay the execution of the judgment in favor of the GSIS. In the process, he violated his Lawyer's Oath and Rule 10.3, Canon 10 of the CPR, and thus recommended the penalty of suspension from the practice of law for at least one year. The IBP Board of Governors adopted the findings and recommendation.

ISSUE:

Whether Mallari employed dilatory tactics to stall the execution of the decision in Civil Case No. 7802 in violation of the CPR. (YES)

RULING:

A lawyer must never be blinded by the cause of his client at the expense of justice, even if the latter turned out to be himself. He must never overlook that as officer of the court, he is primarily called upon to assist in the administration of justice. They are obliged to observe the rules of procedure and not to misuse them to defeat the ends of justice.

In this case, the judgment in favor of the GSIS concerning the validity of the extrajudicial foreclosure proceedings had long become final and executory in G.R. No. 124468. Despite this, Mallari, with the single purpose of delaying the execution of the judgment by the winning party, took the following series of actions which effectively obstructed the execution of a final and executory judgment: (1) by requesting for extension of time to vacate the premises; yet he did not do so; (2) commencing a case for consignation with a prayer for a writ of preliminary injunction or temporary restraining order; and (3) he went on to file a motion for contempt against the GSIS, *et al.,* despite knowledge that the GSIS' ownership over the properties has been upheld.

As the Court previously observed, Mallari's conduct contravened Rule 10.03, Canon 10 of the Code of Professional Responsibility which he enjoins a lawyer to "observe the rules of procedure and x xx not to misuse them to defeat the ends of justice." By his dilatory moves, he further breached and dishonored his Lawyer's Oath.

Notably, when asked to answer the administrative charges against him, respondent does not lament the actions he has taken. Rather, he justifies them by insisting that this Court has erred in its decisions in G.R. No. 124468 and G.R. No. 157659 — decisions which have long attained finality. He again argued against the validity of the extrajudicial foreclosure proceedings despite it being final and executory, and his further reliance on Article 429 of the Civil Code. Such action on his part only affirms his misplaced zealousness and malicious intent to reopen the case in the hopes of gaining a favorable judgment. He demonstrates his propensity to abuse and misuse court processes to the detriment of the winning party and ultimately, the administration of justice. As such, he violated Canon 10 and Rule 10.03 of the CPR:

> Canon 10 — A lawyer owes candor, fairness and good faith to the court.
>
> xxx
>
> Rule 10.03 — A lawyer shall observe the rules of procedure and shall not misuse them to defeat the ends of justice.

Mallari owes good faith, fairness and candor to the court. By arguing a case that has already been rejected repeatedly, he abused his right of recourse to the courts. His acts of not conducting himself "to the best of his knowledge and discretion with all good fidelity to the courts" constitute serious transgression of his professional oath.

Moreover, the filing of another action concerning the same subject matter, in violation of the doctrine of *res judicata*, runs contrary to Canon 12 of the CPR, which requires a lawyer to exert every effort and consider it his duty to assist in the speedy and efficient administration of justice. With this, Mallari violated not only the lawyer's mandate "to delay no man for money or malice," but also Rules 12.02 and 12.04 of the CPR:

> Rule 12.02 — A lawyer shall not file multiple actions arising from the same cause.
>
> xxx
>
> Rule 12.04 — A lawyer shall not unduly delay a case, impede the execution of a judgment or misuse Court processes.

Respondent must be reminded that he is not merely the litigant in his case. He is also his own counsel and an officer of the court with a duty to the truth and the administration of justice:

> 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. Needless to state, the lawyer who files such multiple or repetitious petitions (which obviously delays the execution of a final and executory judgment) subjects himself to disciplinary action for incompetence (for not knowing any better) or for willful violation of his duties as an attorney to act with all good fidelity to the courts, and to maintain only such actions as appear to him to be just and are consistent with truth and honor.

Respondent cannot escape liability by claiming that it was his counsel who signed most of the pleadings. Mallari admits that he filed the petition for review in G.R. No. 157659 before us. By doing so, he ratified the previous actions taken by his counsel.

OFFICE OF THE COURT ADMINISTRATOR, *Complainant*, -versus- ROLANDO C. TOMAS and ANGELINA C. RILLORTA, *Respondents.*
A.M. No. P-09-2633, EN BANC, January 30, 2018, PER CURIAM.

ANGELINA C. RILLORTA, *Complainant*, -versus- JUDGE FE A. MADRID, Regional Trial Court, Branch 21, Santiago City, Isabela, *Respondent.*
A.M. No. RTJ-12-2338, EN BANC, January 30, 2018, PER CURIAM.

Public office is a public trust. This constitutional principle requires a judge, like any other public servant and more so because of his exalted position in the Judiciary, to exhibit at all times the highest degree of honesty and integrity. As the visible representation of the law tasked with dispensing justice, a judge should conduct himself at all times in a manner that would merit the respect and confidence of the people.

Judge Madrid failed to live up to these exacting standards. In this case, the Court agrees with the findings of the OCA, which affirmed the evaluations of the Investigating Justice, "that official receipts were tampered and that there were over-withdrawals from the Fiduciary Fund account amounting P936,000.00Pesos. The Audit Team's findings were not refuted by Judge Madrid and Mrs. Rillorta during the investigation." ***These acts of tampering of official receipts and over-withdrawals from court funds clearly constitute grave misconduct and serious dishonesty****.*

FACTS:

In OCA Memorandum, the Financial Audit Team reported shortages in the Judiciary Development Fund (JDF), General Fund (GF) and Sheriff's General Fund (SGF) of the former Officers-in-Charge as follows: a) Rolando C. Tomas — P18,639.50 (JDF) and P14,538.45 (GF) b) Angelina Rillorta — P23,839.67 (JDF); P7,884.65 (GF) and P12.00 (SGF). The shortage referred to represents the cash bonds which were withdrawn but with incomplete documents such as court orders and acknowledgment receipts.

Mrs. Angelina Rillorta, informed the Court that she has already deposited the shortages incurred in the JDF, GF and the SGF. She argued that she did not misappropriate any money. Mrs. Rillorta narrated that when she assumed as Officer-In-Charge, OCC, the court's financial records were not formally turned over to her. She explained that the monthly financial reports were submitted to Executive Judge Fe Albano Madrid for approval and signature and every time the latter went over the reports, she would change or correct the entries to conform with the entries in the passbook for the fiduciary account. After the corrections were incorporated in the report, Judge Madrid would sign it. Mrs. Rillorta further narrated that, she reviewed the financial records and discovered that the monthly report did not jibe with the bank book entries. Hence, she requested the COA, to audit her books of account and after a preliminary audit, she was instructed to inform Judge Madrid of the discrepancies. She immediately informed Judge Madrid and the latter made some adjustments to the report. She alleged that, a team from the OCA came to conduct a financial audit. When the audit was about to be completed, an exit conference was held. She was expecting to be called to attend the conference; hence, she asked the team leaders if her presence was needed and was told "Di ka namanpinatawagni Judge." She was never required to respond to any findings and was therefore under the impression that Judge Madrid had sufficiently explained the discrepancies.

For her part, Judge Madrid, alleged that she strictly monitored the collections and disbursements. She added that she could not remember if there was a formal turnover of the court's financial reports to Mrs. Rillorta, but an inventory of the records was received by the latter. Mrs. Rillorta prepared the monthly reports which she would note and sign after a review of the attached official receipts. Corrections were made to conform to the supporting documents or to correct wrong computations. She admitted that the monthly reports did not jibe with the bank book in that, the money in the bank is more than what is stated in the monthly reports. However, this did not alarm her because there was more money which meant there was no shortage.

ISSUE:

Whether Judge Madrid is guilty of grave misconduct and serious dishonesty. (YES)

RULING:

Public office is a public trust. This constitutional principle requires a judge, like any other public servant and more so because of his exalted position in the Judiciary, to exhibit at all times the highest degree of honesty and integrity. As the visible representation of the law tasked with dispensing justice, a judge should conduct himself at all times in a manner that would merit the respect and confidence of the people.

Judge Madrid failed to live up to these exacting standards. In this case, the Court agrees with the findings of the OCA, which affirmed the evaluations of the Investigating Justice, "that official receipts were tampered and that there were over-withdrawals from the Fiduciary Fund account amounting P936,000.00Pesos. The Audit Team's findings were not refuted by Judge Madrid and Mrs. Rillorta during the investigation." **These acts of tampering of official receipts and over-withdrawals from court funds clearly constitute grave misconduct and serious dishonesty**.

Misconduct is defined as a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, unlawful behavior, willful in character, improper or wrong behavior. The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules, which must be established by substantial evidence. As distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule must be manifest in a charge of grave misconduct.

Dishonesty, on the other hand, is defined as a disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray.

JUDGE ARIEL FLORENTINO R. DUMLAO, JR. *complainant* –versus- ATTY. MANUEL N. CAMACHO, *respondent.*

A.C. No. 10498, EN BANC, September 4, 2018, GESMUNDO, *J.*

Lawyers should always live up to the ethical standards of the legal profession as embodied in the Code of Professional Responsibility. Public confidence in law and in lawyers may be eroded by the irresponsible and improper conduct of a member of the bar. Thus, every lawyer should act and

comport himself in a manner that would promote public confidence in the integrity of the legal profession.

In the present case, by implying that he can influence Supreme Court Justices for his cause, he trampled upon the integrity of the judicial system and eroded confidence in the judiciary. Instead of respecting court processes, he threatened to use his connections to gain a favorable decision from the complainant and to harass Sheriff Nabua to yield to his request.

FACTS:

Complainant Judge Dumlao, Jr. alleged that while CV Case No. 2004-0181-D was pending, respondent Atty. Camacho fraternize with him. Respondent casually mentioned his closeness to important personages. Pathways, through respondent, filed a motion for summary which was found meritorious by the RTC. Thereafter, respondent started to call complainant and even promised to share a portion of his attorney's fees with complainant in exchange for the denial of the notice of appeal filed by defendants and the issuance of the writ of execution. However, the respondent threatened the complainant that if the offer is refused, the former would surely be disbarred because of his connections.

After the Motion to Deny Appeal with motion for the issuance of execution filed by the respondent was denied, he demanded Court Sheriff Nabua to go with them and serve the writ of execution at the office of defendants. At that point, complainant was convinced of the abusive and scheming character of respondent to influence the court and decided to avoid all means of communication with respondent.

On May 22, 2014, respondent barged into complainant's chambers and demanded that he order the court sheriff to sign the Garnishment Order, which respondent himself prepared. The said garnishment order sought the release of the supposed garnished check of one of the defendants. However, the complainant dismissed respondent and told him to talk instead to Sheriff Nabua who subsequently refused to sign the said document. Thereafter, respondent threatened Sheriff Nabua that if he refused to sign the said document, the former would request for his dismissal. He even claimed that two particular Supreme Court Justices knew the situation regarding the case.

Complainant received several text messages from respondent, threatening him of filing two cases for graft and corruption. Hence, complainant made an Incident Report stating the events that transpired when respondent barged into his chambers and threatened Sheriff Nabua. The IBP Commission on Bar Discipline found respondent guilty of violating the Code and the Lawyer's Oath. The IBP Board of Governors recommended the penalty of disbarment to suspension from the practice of law for six months against the respondent.

ISSUE:

Whether or not respondent is guilty for violation of the Code of Professional Responsibility and the Lawyer's oath. (YES)

RULING:

Lawyers should always live up to the ethical standards of the legal profession. Public confidence in law and in lawyers may be eroded by the irresponsible and improper conduct of a member of the

bar. A lawyer who commits attempted bribery, or corruption of public officials violates Canon 10 and Rule 10.01 of the Code. As stated in the provisions:

CANON 10 – A LAWYER OWS 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 11 states that a lawyer shall observe and maintain the respect due the courts and to judicial officers and should insist on similar conduct by others. While Canon 13 states that 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.

In the present case, respondent fraternized with complainant while CV Case No. 2004-0181-D was pending before the latter's court. He gave an impression that he was an influence peddler. He even named two Justices of the Supreme Court who were supposedly his colleagues and close friends, closely monitored the said case. Thereafter, he asked Judge Dumlao, Jr. to deny the notice of appeal filed by the defendants and issue a writ of execution. Furthermore, he told the complainant that he would share a portion of his attorney's fees with the latter in exchange for the issuance of the writ of execution and the denial of the said appeal.

Then, on May 22, 2014, After Sheriff Nabua refused respondent's request, he then again gave an impression that he would be able to dismiss Sheriff Nabua because of his influence with the higher authorities. By implying that he can influence Supreme Court Justices for his cause, he trampled upon the integrity of the judicial system. He disrespected the judicial system and his acts constitute arrogance and deceit. Hence, respondent violated Canon 13 and Canon 10 of the Code.

Furthermore, Canon 19 and 11 of the Code require lawyers to uphold the dignity and authority of the courts, represent their client with zeal within the bounds of the law. It is the duty of a lawyer to observe and maintain the respect due to the courts of justice and its officers.

In this case, instead of respecting the court processes, respondent drafted his own version of the order of garnishment and demanded that Sheriff Nabua sign it. All the events that transpired on May 22, 2014, showed how respondent's act are palpably irregular and disrespectful to the court. He disregarded the good conduct expected from lawyers before the courts. Thus violating several Canons and Rules of the Code of Professional Responsibility.

Since Atty. Camacho has already been previously disbarred, the Court's penalty should only be considered if he applied for the lifting of his disbarment.

KENNETH R. MARIANO, *Complainant,* -versus- ATTY. JOSE N. LAKI, *Respondent.*

A.C. No. 11978 [Formerly CBD Case No. 10-2769], EN BANC, September 25, 2018, Per Curiam

When a lawyer collects or receives money from his client for a particular purpose, 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. Atty. Laki's failure to render an accounting, and to return the money if the intended purpose thereof did not materialize, constitutes a blatant disregard of Rule 16.01 of the CPR.

Moreover, Canon 11 states 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, while Rule 11.04 states that a lawyer shall not attribute to a Judge motives not supported by the record or have no materiality to the case. Atty. Laki's act of giving assurance to Mariano that he can secure a favorable decision without the latter's personal appearance because the petition will be filed in the RTC of Tarlac, which is allegedly presided by a "friendly" judge receptive to annulment cases give the implication that a favorable decision can be obtained merely on the basis of close ties with the judge and not necessarily on the merits. Without doubt, Atty. Laki's statements cast doubts on the integrity of the courts in the eyes of the public.

FACTS:

Kenneth R. Mariano (Mariano) approached and engaged the services of Atty. Jose N. Laki (Atty. Laki) for the filing of a petition for annulment of the latter's marriage. Atty. Laki then asked from Mariano a total of Php 160,000.00, representing a package deal for the former's professional fee, docket fee and expenses for the preparation and filing of the petition, subject to an advance payment of Php 50,000.00. Mariano expressed his concern over the said amount but was persuaded by Atty. Laki's assurances, specifically how the latter assured him that he could secure a favorable decision even without Mariano's personal appearance since he will file the petition for annulment before the Regional Trial Court (RTC) of Tarlac which is presided by a "friendly judge" and is known to be receptive to annulment cases.

Believing in Atty. Laki's assurances, Mariano initially paid Atty. Laki the amount of Php 50,000.00. Upon Atty. Laki's relentless follow-ups to pay the remaining balance, Mariano made the succeeding payments in the amounts of P40,000.00 and P60,000.00, respectively. Almost a year thereafter, Mariano followed up with Atty. Laki the status of the petition. He then discovered that the petition has yet to be filed. Atty. Laki told him that the Presiding Judge of the RTC-Tarlac where he allegedly filed the petition has been dismissed by the Supreme Court, thus, he decided to withdraw the case since he did not expect the new presiding judge to be "friendly."

After several failed attempts to contact and meet Atty. Laki, Mariano then decided to demand for the return of the money he gave. Despite Mariano's demand to Atty. Laki to return his money, his demands were left unheeded. Atty. Laki promised Mariano that he would return the money in installments within two weeks because he still has to raise it, but Atty. Laki failed to make good of his promise. Later, Mariano's succeeding phone calls were rejected. Mariano also alleged that Atty. Laki's office in Guagua, Pampanga, was always closed. Aggrieved, Mariano filed a disbarment case against Atty. Laki.

The IBP-CBD recommended that Atty. Laki be disbarred.

ISSUE:

Whether or not Atty. Laki should be disbarred (YES)

RULING:

It must be emphasized anew that 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. When a lawyer collects or receives money from his client for a particular purpose, 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. Atty. Laki's failure to render an accounting, and to return the money if the intended purpose thereof did not materialize, constitutes a blatant disregard of Rule 16.01 of the CPR.

Moreover, Canon 11 states 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, while Rule 11.04 states that a lawyer shall not attribute to a Judge motives not supported by the record or have no materiality to the case. Atty. Laki's act of giving assurance to Mariano that he can secure a favorable decision without the latter's personal appearance because the petition will be filed in the RTC of Tarlac, which is allegedly presided by a "friendly" judge receptive to annulment cases give the implication that a favorable decision can be obtained merely on the basis of close ties with the judge and not necessarily on the merits. Without doubt, Atty. Laki's statements cast doubts on the integrity of the courts in the eyes of the public. By making false representation to his client, Atty. Laki not only betrayed his client's trust but he also undermined the trust and faith of the public in the legal profession.

4. To the clients

a. Canons 14 to 22

GENE M. DOMINGO, *Complainant*, -versus- ATTY. ANASTACIO E. REVILLA,JR., *Respondent*.
A.C. No. 5473, EN BANC, January 23, 2018, PER CURIAM.

Canon 15 of the CPR requires members of the Legal Profession to observe candor, fairness and loyalty in all their dealings and transactions with their clients.In this case, the respondent told the complainant that the judge handling the case would rule in their favor only if he would be given 10% of the value of the property, and that the handling judge consequently agreed on the fee of P200,000.00 but needed an additional P50,000.00 "for the boys" in the CA and the C. In doing so, the respondent committed calumny, and thereby violated Rules 15.06 and 15.07 of Canon 15.

Rule 18.03, Canon 18 of the CPR states that a lawyer shall not neglect a legal matter entrusted to him and his negligence in connection therewith shall render him liable.The respondent's conduct of accepting money for his legal services and of failing to render the contracted legal services violated Canon 18.

FACTS:

The complainant is an American citizen of Filipino descent. During a visit to the Philippines in 2000, he sought the services of petitioner to handle the cases to be filed against his cousin and to work on the settlement of the estate of his late mother.

The complainant alleged that the respondent represented to him that he would take on the cases in behalf of the law firm of AgabinVerzolaHermosoLayaoen& De Castro. He assured petitioner

that the law firm was able and willing to act as his legal counsel in the cases he intended to institute. Trusting respondent, the complainant paid the initial amount of P80,000.00.

Being based in the U.S.A., the complainant maintained constant communication with respondent often through e-mail and sometimes by telephone. The complainant alleged that based on his correspondences with respondent, the latter made several misrepresentations as to the progress of the cases.

Based on the respondent's representation as to how justice was achieved in the Philippines, the complainant was constrained to give to the respondent the requested amounts in the belief that he had no choice. The complainant would repeatedly request the original or at the very least copies of the decisions and the titles, but respondent repeatedly failed to comply with the requests. Even worse, the respondent cut off the communications between them.

The complainant decided to write the law firm to inform them of the fraudulent actions of the respondent. The complainant was surprised to be informed that he had never been its client. The law firm also told him that the respondent had been forced to resign because of numerous complaints about his performance as a lawyer.

Hence, the complainant engaged the services of another law firm which secured a certification from the RTC of Abra to the effect that no case against is cousin had been filed. The complainant also discovered that none of the representations of the respondent had come to pass because all of such representations were sham.

The complainant filed his complaint for disbarment against respondent.

In its findings, the IBP concluded that the respondent was guilty of negligence and recommended that: *(a)* he be reprimanded with a stern warning that any repetition of his conduct would be dealt with more severely; and *(b)* he be ordered to return the P513,000.00 he had received from the complainant.

ISSUE:

Whether respondent violated the Code of Professional Responsibility. (YES)

RULING:

The Court accepted the findings against the respondent but modified the recommended penalty considering that his violation of the Code of Professional Responsibility constituted deliberate defraudation of the client instead of mere negligence.

Firstly, the respondent misled the complainant into thinking that it would be his law firm that was to take on the case. Secondly, despite the fact that he had intimated to the complainant that it would be highly unlikely to still have the adoption decree nullified due to the decree having long become final and executory, he nonetheless accepted the case. Thirdly, he told the complainant that he had already instituted the action for the annulment of the adoption despite not having yet done so. Fourthly, he kept on demanding more money from the complainant although the case was not actually even moving forward. Fifthly, he continued to make up excuses in order to avoid

having to furnish to the complainant the requested copies of court documents that, in the first place, he could not produce. And, lastly, he claimed that he intended to return the money to the complainant but instead sent the latter a stale check.

All these acts, whether taken singly or together, manifested the respondent's dishonesty and deceit towards the complainant, his client, in patent violation of Rule 1.01 of the CPR.

Rule 18.03, Canon 18 of the CPR states that a lawyer shall not neglect a legal matter entrusted to him and his negligence in connection therewith shall render him liable. The Court has consistently held, in respect of this Rule, that the mere failure of the lawyer to perform the obligations due to the client is considered *per se* a violation.

The respondent's conduct of accepting money for his legal services and of failing to render the contracted legal services violated Canon 18.

Furthermore, the respondent did not abide by the mandate of Canon 15 that required members of the Legal Profession to observe candor, fairness and loyalty in all their dealings and transactions with their clients.

In their conversations, the respondent told the complainant that the judge handling the case would rule in their favor only if he would be given 10% of the value of the property at Better Living Subdivision, Parañaque, and that the handling judge consequently agreed on the fee of P200,000.00 but needed an additional P50,000.00 "for the boys" in the Court of Appeals and the Supreme Court. In doing so, the respondent committed calumny, and thereby violated Rules 15.06 and 15.07 of Canon 15.

In fine, the gravity of the respondent's professional misconduct and deceit should fully warrant his being permanently barred from reinstatement to the ranks of the Philippine Bar and from having his name restored in the Roll of Attorneys. However, circumstances attendant in his case should be considered and appreciated in mitigating the penalty to be imposed.

The first of such circumstances related to the context of the engagement between the parties. At the outset, the respondent was candid in explaining to the complainant that the prosecution of the case would be complicated mainly because the adoption had been decreed in 1979 yet. Another circumstance is that the respondent had already returned to the complainant the amount of P650,000.00. And, thirdly, the Court cannot but note the respondent's several pleas for judicial clemency to seek his reinstatement in the ranks of the Philippine Bar. Pleas for judicial clemency reflected further remorse and repentance on the part of the respondent. His pleas appear to be sincere and heartfelt.

In view of the foregoing circumstances, perpetual disqualification from being reinstated will be too grave a penalty in light of the objective of imposing heavy penalties like disbarment to correct the offenders. The penalty ought to be tempered to enable his eventual reinstatement at some point in the future. Verily, permanently barring the respondent from reinstatement in the Roll of Attorneys by virtue of this disbarrable offense will deprive him the chance to return to his former life as an attorney.

ILUMINADA D. YUZON, *Complainant*, -versus- ATTY. ARNULFO M. AGLERON, *Respondent*.
A.C. No. 10684, SECOND DIVISION, January 24, 2018, PERALTA, *J.*

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.

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

FACTS:

Iluminada alleged that sometime on December 23, 2008, she gave Atty. Agleron the amount of One Million Pesos (P1,000,000.00) meant for the purchase of a house and a lot of one Alexander Tenebroso (Alexander), situated at Mati, Davao Oriental. 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. Atty. Agleron, among others, claims that the total amount of P438,000.00 was delivered to herein Iluminada on different occasions, as per her request, and 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.

The IBP Investigating Commissioner found Atty. Agleron administratively liable and recommended that he be meted the penalty of suspension from the practice of law for one (1) year. This ruling is based on Atty. Agleron's admission that he is still in possession of the amount of P582,000.00.

ISSUE:

Whether Atty. Agleron is guilty of violating Canon 16 of CPR. (YES)

RULING:

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.

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.
>
> xxx
>
> **Rule 16.03** — A lawyer shall deliver the funds and property of his client when due or upon demand.

Verily, the relationship between a lawyer and his client is highly fiduciary and prescribes on a lawyer a great 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. Thus, a lawyer's failure to return upon demand the funds held by him on behalf of his client, as in this case, 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.

Therefore, the Court held respondent held GUILTY of Gross Misconduct in violation of Section 27, Rule 138 of the Rules of Court, as well as Rules 16.01 and 16.03, Canon 16 of the Code of Professional Responsibility.

PELAGIO VICENCIO SORONGON, JR., *Complainant*, -versus- ATTY. RAMON Y. GARGANTOS, SR., *Respondent*

A.C. No. 11326, SECOND DIVISION, June 27, 2018, Caguioa, *J*.

In determining or tempering the penalty to be imposed, has considered mitigating factors, such as the respondent's advanced age, health, humanitarian and equitable considerations, as well as whether the act complained of was respondent's first infraction.

FACTS:

Complainant Pelagio Vicencion Sorongon, Jr. was a retired businessman and was charged before the Sandiganbayan for violation of Section 3(e) of R.A. No. 3019. He engaged Atty. Ramon Gargantos, Sr.'s legal services and allegedly gave respondent the amount of two hundred thousand pesos as full payment of the latter's legal services which would cover the acceptance fee, appearance fee and other fees. It was also agreed upon that if there would be court hearings outside of Quezon City, then it would be Sorongon that would provide for Gargantos's expenses. However, there was no receipt and there was also no formal memorandum of agreement.

Despite Gargantos's legal services having been allegedly paid in the amount of P200,000.00, which, as was said to be agreed upon, he allegedly abandoned his client when the latter was not able to give him the "pocket money" he had demanded.

Sorongon is now praying for the refund of a portion of the amount paid to Gargantos in order that he might hire a new lawyer, and it was only the complainant who appeared and filed his brief and pleadings, which Gargantos failed to do.

The CBD found that Gargantos violated the Lawyer's Oath and the Code of Professional Responsibility, Canon 16, Rule 16.01. Thus, it was recommended that he be suspended from the

practice of law for a period of one year and that he should return all documents and money in his possession over and above his lawful and reasonable attorney's fee amounting to P150,000, with a warning that a repetition of the same or similar offense shall be dealt with more severely. The IBP adopted and approved the CBD's Report but modified by ordering Gargantos to return the entire amount of P200,000 to Sorongon.

ISSUE:

Whether or not Gargantos violated the Lawyer's Oath and Canon 16, Rule 16.01 of the Code of Professional Responsibility. (YES)

RULING:

The Supreme Court adopted the findings of Commissioner Villamor of the Commission on Bar Discipline with modifications.

The Court agreed that Gargantos allegedly failed to return, despite demand, the complainant's documents after he withdrew as his counsel in violation of Canon 16, Rule 16.01 which provides that a lawyer shall account for and hold in trust the money or property from the client.

However, in deciding the punishment, the Court took note of the respondent's advanced age and the fact that it was Gargantos's first offense. Thus, in determining or tempering the penalty to be imposed, has considered mitigating factors, such as the respondent's advanced age, health, humanitarian and equitable considerations, as well as whether the act complained of was respondent's first infraction.

In the present case, in view of the respondent's advanced age and the fact that this is his first offense, Gargantos was suspended from the practice of law for six (6) months and warned that a repetition of the same or similar acts shall be dealt with more severely. The Court also instructed him to return the legal fees paid to him by the complainant in the amount of Two Hundred Thousand Pesos (P200,000.00), and the documents in his possession which pertain to the case of the complainant.

MARIA EVA DE MESA, *Complainant*, -versus- ATTY. OLIVER O. OLAYBAL, *Respondent.*
A.M. No. 9129, THIRD DIVISION, January 31, 2018, BERSAMIN, *J.*

The respondent's failure to deliver the checks to Asialink and instead depositing the checks in his account and thereafter misappropriating the funds thereof for his personal benefit constituted a serious breach by him of Canon 16, Rule 16.01 and Rule 16.02 of the Code of Professional Responsibility.

The relationship between a lawyer and his client is highly fiduciary, and imposes on the former a great degree of fidelity and good faith. Thus, any money or property received by him from his client for delivery to another in the context of the relationship is merely held by him in trust and should not be appropriated for his own benefit. For him to do otherwise is a violation of his oath as an attorney and officer of the Court. Also, the respondent's act of binding the complainant to the terms of the compromise agreement even if he had not been expressly and properly authorized to do so reflected

his disregard of the duty of fidelity that he owed at all times towards her as the client. He thereby violated Canon 17 of the Code of Professional Responsibility

FACTS:

The complainant avers that the respondent was her counsel in her criminal cases for violation of Batas Pambansa Blg. 22. As regards the Pasig Case, Atty. Olaybal advised her to settle amicably for the amount of P78,640.00. Following his advice, she procured, Prudential Bank Manager's Checks No. 5574 and No. 5575 for the amounts of P74,400.00 and P4,240.00. Both checks were crossed and payable to Asialink Finance Corporation (Asialink). She handed the checks to the respondent for delivery to Asialink but he did not deliver the checks to Asialink, instead deposited them to his account through his son. Atty. Olaybal then executed a compromise agreement with Asialink on her behalf as settlement of the Pasig Case. Under the compromise agreement, he undertook to pay Asialink the total sum of P83,328.00 through monthly installment payment. He also executed a deed of undertaking in Asialink's favor, whereby he guaranteed her monthly payment by issuing 12 post-dated checks in favor of Asialink. The complainant charges respondent Atty. Oliver O. Olaybal with betrayal of trust and confidence, malpractice and gross misconduct as a lawyer.

IBP Investigating Commissioner declared that Atty. Olaybal misappropriated the amounts of the manager's checks for his personal gain and in violation of Canon 16, Rule 16.01; that his depositing the checks to his account and commingling the proceeds thereof with his personal funds violated Rule 16.02; and that his entering into the compromise settlement without authority placed the complainant at risk of undergoing criminal prosecution and conviction, thereby failing to safeguard her interest in violation of his ethical duty under Canon 18. IBP Board of Governors adopted and approved the report of IBP Investigating Commissioner.

ISSUE:

Whether the findings and recommendations of the IBP Board of Governors proper. (YES)

RULING:

The respondent's failure to deliver the checks to Asialink and instead depositing the checks in his account and thereafter misappropriating the funds thereof for his personal benefit constituted a serious breach by him of Canon 16, Rule 16.01 and Rule 16.02 of the Code of Professional Responsibility, which state as follows:

> Canon 16 — A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME TO 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.

The relationship between a lawyer and his client is highly fiduciary and imposes on the former a great degree of fidelity and good faith. Thus, any money or property received by him from his client

for delivery to another in the context of the relationship is merely held by him in trust and should not be appropriated for his own benefit. For him to do otherwise is a violation of his oath as an attorney and officer of the Court. Also, the respondent's act of binding the complainant to the terms of the compromise agreement even if he had not been expressly and properly authorized to do so reflected his disregard of the duty of fidelity that he owed at all times towards her as the client. He thereby violated Canon 17 of the Code of Professional Responsibility.

SUSAN T. DE LEON, *Complainant*, -versus- ATTY. ANTONIO A. GERONIMO, *Respondent.*
A.C. No. 10441, SECOND DIVISION, February 14, 2018, PERALTA, *J.*

Atty. Geronimo's failure to inform his client of the adverse ruling of the NLRC and the status of the Motion for Reconsideration filed before the commission violated Canon 17 which provides that a lawyer owes fidelity to the cause of his client and he shall be mindful of the trust reposed to him and Canon 18 which provides that a lawyer shall serve his client with competence and diligence.

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 schedules hearings or conferences, preparing and filing the required pleadings, prosecuting the handles cases with reasonable dispatch, and urging their termination without waiting for the client or the court to prod him or her to do so. Therefore, a lawyer's negligence in fulfilling his duties subjects him to disciplinary action.

FACTS:

A disbarment complaint was filed by Susan De Leon against Atty. Antonio A. Geronimo for purportedly acts in violation of the Lawyer's Oath and the Code of Professional Responsibility. Complainant De Leon engaged the services of Atty. Geronimo to represent her in a labor case, where De Leon's employees filed complaints for illegal dismissal and violations of labor standards against her. The Labor Arbiter (LA) rendered a decision dismissing said complaints against De Leon but ordered her to pay each of the employees P 5000.00 as financial assistance. **Without being informed by Atty. Geronimo, the NLRC reversed the decision of the LA ordering De Leon and co-respondents to reinstate the complainants and pay them more than P 7 Million.**

When De Leon received a copy of the Motion for Reconsideration which Atty. Geronimo prepared, she was disappointed since the motion was composed of only three pages and the arguments did not address all the issues in the assailed decision. Thus, De Leon later filed a Supplemental Motion for Reconsideration before the NLRC. After which, De Leon never heard anything from his lawyer again. **When she wanted to check the status of the motions, Atty. Geronimo informed her that said motions had already been denied by the NLRC**. When De Leon asked him if he elevated the case to the Court of Appeals, Atty. Geronimo said that he did not and when asked why, he stated that it's not important as his client did not have any money and properties.

On the other hand, Atty. Geronimo claims that he exerted his best defending her before the LA by filing the mandatory pleadings and supporting documents. In addition, he asserts that he did everything to explain to his client the consequences if the NLRC reversed the LA's decision. After the NLRC reversed the LA's decision, he claims that even if De Leon asked for the entire case records because she would ask another lawyer to prepare the motion of reconsideration, he still prepared a motion for reconsideration. In fact, according to him, it was another lawyer who

prepared the Supplemental Motion for Reconsideration. When the motions were denied, Atty. Geronimo claims that he extensively explained the requirements in filing a petition before the Court of Appeals but it was De Leon's decision not to file anymore because she had no more money left in the bank and she did not own any real property.

The Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP) recommended the **suspension of Atty. Geronimo from the practice of law for six months.** The IBP Board of Governors adopted the aforementioned recommendations but with modifications **suspending Atty. Geronimo for three months**.

ISSUE:

Whether Atty. Geronimo committed acts in violation of the Lawyer's Oath and the Code of Professional Responsibility. (YES)

RULING:

In this case, when De Leon received a copy of the Motion for Reconsideration, she was disappointed that it was only composed of three pages and the arguments did not address all the issues in the assailed decision and after Atty. Geronimo provided her with copies of the LA and NLRC decision, she never heard from him again. When she called to follow up the status of the motions, she was furious to learn that not only the motions were denied by the NLRC, but worse, Atty. Geronimo no longer appealed to the CA. It is clear that Atty. Geronimo violated **Canon 17 and Canon 18, Rule 18.03 and Rule 18.04 of the Code of Professional Responsibilitywhen he failed to inform his client about the adverse ruling of the NLRC**, thereby depriving her of her right to exercise an appeal which provides:

> **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.**
>
> 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.**

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 schedules 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. Therefore, a lawyer's negligence in fulfilling his duties subjects him to disciplinary action.

It is clear in the facts that Atty. Geronimo was unjustifiably remiss in his bounden duties as De Leon's counsel. Atty. Geronimo's negligence cost De Leon her entire case and left her with no appellate remedies. **Atty. Geronimo failed to exhaust all possible means to protect his client's interests, which is contrary to what he had sworn to do as a member of the legal profession.**

MARIA ROMERO, *Complainant,* -versus- ATTY. GERONIMO R. EVANGELISTA, JR, *Respondent.*
A.C. No. 11829, SECOND DIVISION, February 26, 2018, REYES, JR., *J.*

The rule against conflict of interest prohibits a lawyer from representing new clients whose interests oppose those of a former client in any manner, whether 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. With Atty. Evangelista's admission that he retained clients who have cases against Adela without all the parties' written consent, there has been a representation of conflict of interest, in violation of Canon 15, Rule 15.03 of the CPR.

FACTS:

A complaint for disbarment was filed against Atty. Geronimo R. Evangelista instituted by Maria Romero. Maria alleged that Atty. Evangelista represented her and her aunt Adela Romero, in their individuals and as Heirs of the Late Adela Aguinaldo Vda. De Romero. However, Atty. Evangelista subsequently represented Spouses Valles in several suits against Adela.

Atty. Evangelista explained that there was no lawyer-client relationship between him and Maria; his professional services were never retained by Maria nor did he receive any confidential information from her; and Maria never paid him any legal fee.

ISSUE:

Whether Atty. Evangelista is guilty of representing conflicting interests. (YES)

RULING:

The rule against conflict of interest prohibits a lawyer from representing new clients whose interests oppose those of a former client in any manner, whether 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.

With Atty. Evangelista's admission that he retained clients who have cases against Adela without all the parties' written consent, there has been a representation of conflict of interest, in violation of Canon 15, Rule 15.03 of the CPR. Moreover, Adela's non-participation in the filing of the complaint is immaterial because disbarment proceedings can be instituted *motu proprio.*

POTENCIANO R. MALVAR, *Complainant,* -versus- ATTY. FREDDIE B. FEIR, *Respondent.*
A.C. No. 11871 (Formerly CBD Case No. 154520), SECOND DIVISION, March 05, 2018, PERALTA, *J.*

Under Rule 19.01 of the Code of Professional Responsibility, a lawyer should not file or threaten to file any unfounded or baseless criminal case or cases against the adversaries of his client designed to secure a leverage to compel the adversaries to yield or withdraw their own cases against the lawyer's client. Atty. Feir's demand for said amount is not extortion but is actually a legitimate claim for the remaining balance subject of a legitimate transaction since it was based on a valid and justifiable cause.

FACTS:

PotencianoMalvar filed a disbarment case against Atty. Freddie Feir for violation of Canon 19, Rule 19.01 of the Code of Professional Responsibility and the lawyer's oath. Malvar alleged that Atty. Feir sent him threatening letters, stating that should he fail to pay P18 Million to his client, Rogelio Amurao, Atty. Feir will file criminal, civil, and administrative complaints, which were in truth, unfounded. Such demands, according to Malvar, are tantamount to blackmail or extortion because Atty. Feir tried to obtain something of value by means of threats of filing complaints.

Atty. Feir countered that he merely sent letters asking an explanation from Malvar as to why subject properties were already registered in Malvar's name while Amurao was yet to receive the P18 Million as remaining balance to the purchase price.

ISSUE:

Whether Atty. Feir is guilty of blackmailing or extortion. (NO)

RULING:

Under Rule 19.01 of the Code of Professional Responsibility, a lawyer should not file or threaten to file any unfounded or baseless criminal case or cases against the adversaries of his client designed to secure a leverage to compel the adversaries to yield or withdraw their own cases against the lawyer's client.

It is undisputed that subject properties were already registered under Malvar's name, but according to Amurao, he has yet to receive the remaining balance of the purchase price. This fact alone is enough reason for Amurao to seek legal advice from Atty. Feir and for the latter to send demand letters to Malvar.

Atty. Feir's demand for said amount is not extortion but is actually a legitimate claim for the remaining balance subject of a legitimate transaction. There is nothing in the letters showing that it was maliciously made with intent to extort money since it was based on a valid and justifiable cause.

EDGAR M. RICO, *Complainant,* -versus- ATTY. REYNALDO G. SALUTAN, *Respondent.*
A.C. No. 9257 (Formerly CBD Case No. 12-3490), SECOND DIVISION, March 05, 2018, PERALTA, *J.*

An attorney enjoys the legal presumption that he is innocent of the charges against him until the contrary is proved, and that as an officer of the court, he is presumed to have performed his duties in accordance with his oath. Here, Rico failed to show any badge of deception on Atty. Salutan's part. All that Atty. Salutan did was to zealously advocate for the cause of his client.

FACTS:

A complaint was filed against Atty. Reynaldo G. Salutan for purportedly misleading the court and for contempt of court. Complainant Edgar Rico alleged that his relatives were plaintiffs in a case for Forcible Entry. The MTCC ruled in favor of them. Milagros Villa Abrille, one of the defendants in the aforementioned case, filed a separate case for Unlawful Detainer against Rico involving the same property. Thereafter, the MTCC ruled in favor of Milagros.

Milagros, through her counsel Atty. Salutan, filed a motion for the issuance of a Writ of Execution and was only granted the fourth time he filed it. Subsequently, Rico filed the administrative complaint against Atty. Salutan and the latter argued that he merely advocated for his client's cause and did the same within the bounds of the law.

ISSUE:

Whether Atty. Salutan advocated for his client's cause and acted within the bounds of the law. (YES)

RULING:

An attorney enjoys the legal presumption that he is innocent of the charges against him until the contrary is proved, and that as an officer of the court, he is presumed to have performed his duties in accordance with his oath.

Here, Rico failed to show any badge of deception on Atty. Salutan's part. There was no court decision declaring that Villa Abrille's title was fake or that it had encroached on Rico's property. All that Atty. Salutan did was to zealously advocate for the cause of his client. He was not shown to have misled or unduly influenced the court through misinformation. He merely persistently pursued said cause and he did so within the bounds of the law. He succeeded at finally having the writ of execution, albeit at the fourth time implemented.

REMIGIO P. SEGOVIA, JR., FRANCISCO RIZABAL, PABLITO RIZABAL, MARCIAL RIZABAL ROMINES, PELAGIO RIZABAL ARYAP AND RENATO RIZABAL, ***Complainants*****, -versus- ATTY. ROLANDO S. JAVIER**, ***Respondent.***
A.C. No. 10244, SECOND DIVISION, March 12, 2018, PERALTA, *J.*

A lawyer owes fidelity to the cause of his client and must be mindful of the trust and confidence reposed in him. An attorney's duty to safeguard the client's interests commences from his retainer until his effective release from the case or the final disposition of the whole subject matter of the litigation. During that period, he is expected to take such reasonable steps and such ordinary care as

his client's interests may require. In other words, acceptance of money from a client establishes an attorney-client relationship and gives rise to the duty of fidelity to the client's cause.

FACTS:

Complainants alleged that they engaged the services of respondent as their counsel in a case involving falsification of documents and recovery of property. During the existence of attorney-client relationship, respondent asked the complainants the amount of P30,000.00 as filing fee, which they have dutifully paid. Complainants discovered that respondent also demanded from one Riza RizabalTesalona the amount of P27,000.00 in connection with the case. Whenever they followed-up on the case, they always received a response from respondent to not worry as he would tile the case within the week, and an assurance that the case will be resolved in their favor. However, respondent never filed the case. The IBP Board of Governors recommended that respondent should be suspended for violation of Rule 18.03.

ISSUE:

Whether the Supreme Court should uphold the recommendation of the IBP Board of Governors. (YES)

RULING:

A lawyer owes fidelity to the cause of his client and must be mindful of the trust and confidence reposed in him. An attorney's duty to safeguard the client's interests commences from his retainer until his effective release from the case or the final disposition of the whole subject matter of the litigation. During that period, he is expected to take such reasonable steps and such ordinary care as his client's interests may require. In other words, acceptance of money from a client establishes an attorney-client relationship and gives rise to the duty of fidelity to the client's cause.

In the instant case, it was undisputed that respondent failed to tile the case of falsification of public documents and recovery of property in favor of complainants despite receiving the money in connection with the said case. Respondent's inaction despite repeated follow-ups and his promise that the case will be resolved in complainants' favor demonstrated his cavalier attitude and appalling indifference to his clients' cause.

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. Conversely, if the lawyer does not use the money for the intended purpose, he must immediately return the money to the client.

DARIO TANGCAY, *Complainant*, -versus- HONESTO ANCHETA CABARROGUIS, *Respondent*.
A.C. No. 11821 (formerly CBD Case No. 15-4477), FIRST DIVISION, April 02, 2018, DEL CASTILLO, *J.*

Canon 16 of the Code of Professional Responsibility (CPR) which states:"A lawyer shall hold in trust all moneys and properties of his client that may come into his possession."

Rule 16.04 thereof mandates that: "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 lead 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."

There is hardly any doubt or dispute that Atty. Cabarroguis did lend money to his client, Tangcay, this fact being evidenced by a real estate mortgage which the latter signed and executed in favor of the former.

The law profession is distinguished from any other calling by the fiduciary duty of a lawyer to his or her client. It is almost trite to say that lawyers are strictly required to maintain the highest degree of public confidence in the fidelity, honesty and integrity of their profession. "Lawyers who obtain an interest in the subject-matter of litigation create a conflict-of-interest situation with their clients and thereby directly violate the fiduciary duties they owe their clients."

FACTS:

Tangcay averred in his complaint that: (1) he inherited a parcel of land from his father and the same was registered in his name under Transfer Certificate of Title (TCT) No. T-288807 (subject property); (2) one Emilia S. Solicar filed a Petition for Probate of a purported Last and Will Testament of his late father docketed as Special Proceedings No. 4833-98 (probate case); (3) he engaged the legal services of Atty. Cabarroguis to defend and represent him in the probate case; (4) while handling the case, Atty. Cabarroguis learned, that the subject property was mortgaged[2] with the First Davao Lending Corporation (lending corporation) for P100,000.00; (5) Atty. Cabarroguis then offered him a loan of P200,000,00 with an interest lower than, what the lending corporation imposed; (6) he accepted the same and signed the real estate mortgage[3] unaware of the illegality and impropriety of a lawyer lending money to a client; and (7) when he defaulted in payment, Atty. Cabarroguis instituted a Judicial Foreclosure of the real estate mortgage.

In the IBP report dated May 19, 2015, IBP Commissioner Arsenio P. Adriano (Commissioner Adriano) found Atty. Cabarroguis administratively liable under Canon 16, particularly Rule 16.04, of the Code of Professional Responsibility and recommended that Atty. Cabarroguis be suspended from the practice of law for three months.

ISSUE:

Whether Atty. Cabarroguis violated Canon 16 particularly Rule 16.04, of the Code of Professional Responsibility. (YES)

RULING:

The Court adopts the resolution of the IBP Board of Governors.

Quite clearly, Atty. Cabarroguis violated the prohibition against lawyers lending money to their clients.Pertinent to the case at bar is Canon 16 of the Code of Professional Responsibility (CPR) which states: "A lawyer shall hold in trust all moneys and properties of his client that may come into his possession."

Rule 16.04 thereof mandates that: "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 lead 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."

The law profession is distinguished from any other calling by the fiduciary duty of a lawyer to his or her client. It is almost trite to say that lawyers are strictly required to maintain the highest degree of public confidence in the fidelity, honesty and integrity of their profession. "Lawyers who obtain an interest in the subject-matter of litigation create a conflict-of-interest situation with their clients and thereby directly violatefiduciary duties they owe their clients."

ATTY. JUAN PAOLO VILLONCO, *Complainant*, -versus-ATTY. ROMEO G. ROXAS, *Respondent*.
A.C. No. 9186, SECOND DIVISION,APRIL 11, 2018, PERALTA, *J.*

Canon 17 of the CPR states: "A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him."

It is settled 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.

In engaging the services of an attorney, the client reposes on him special powers of trust and confidence. Their relationship is strictly personal and highly confidential and fiduciary. The relation is of such delicate, exacting, and confidential nature that is required by necessity and public interest. Only by such confidentiality and protection will a person be encouraged to repose his confidence in an attorney. Thus, the preservation and protection of that relation will encourage a client to entrust his legal problems to an attorney, which is of paramount importance to the administration of justice.

In the instant case, Atty. Roxas's defiant attitude ultimately caused his client to lose its trust in him. He intentionally denied his client's requests on how to proceed with the case and insisted on doing it his own way. He could not possibly use the supposed blanket authority given to him as a valid justification, especially on non-procedural matters, as in the case at bar, if he would be contradicting his client's trust and confidence in the process. Atty. Roxas clearly disregarded the express commands of the Code of Professional Responsibility (CPR), specifically Canon 17.

FACTS:

Republic Real Estate Corporation *(RREC),* with complainant Atty. Juan Paolo T. Villonco as its president, hired respondent Atty. Romeo G. Roxas as its counsel on a contingent basis in its case against the Republic of the Philippines with respect to a reclaimed land which is now the Cultural Center of the Philippines (*CCP)* complex. Subsequently, RREC was awarded around ₱10,926,071.29 representing the sum spent in the reclamation of the CCP complex.

The case was later remanded to the Regional Trial Court *(RTC)* of Pasay City for the execution of the decision. RREC's Board of Directors enjoined Atty. Roxas to defer the filing of the motion for the issuance of a Writ of Execution until further instruction, but he still filed the same. Thereafter, the Republic filed a Petition for *Certiorari* against the Writ of Execution eventually issued by the trial

court. On February 27, 2009, the Court of Appeals *(CA)* issued an Order granting said petition and declared the Writ of Execution null and void. Aggrieved, Atty. Roxas, without first securing RREC's consent and authority, filed a Motion for Reconsideration and a Motion for Inhibition with the CA.

Without being approved or authorized by the RREC's Board of Directors, he likewise filed a complaint for serious misconduct against CA Justices Sesinando E. Villon, Andres B. Reyes, Jr. and Jose Catral Mendoza, and a petition assailing the constitutionality of Presidential Decree No. 774, both on RREC' s behalf. For his foregoing unauthorized acts, RREC's Board requested Atty. Roxas to voluntarily withdraw as counsel for the corporation. When Atty. Roxas refused, RREC terminated its retainer agreement with Atty. Roxas and engaged the services of another lawyer to replace him in the representation of the company.

However, despite his termination, Atty. Roxas still appeared for RREC and continued to argue for the corporation in the case.*1âwphi1* He also threatened to sue the members of the RREC Board unless they reinstated him as counsel. Thus, Atty. Villonco was compelled to file the instant administrative complaint against Atty. Roxas.

ISSUE:

Whether Atty. Roxas may be held administratively liable. (YES)

RULING:

It is settled 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.

Here, RREC's Board of Directors specifically instructed Atty. Roxas to postpone the filing of the motion for the issuance of a Writ of Execution until further notice, but he defied the same and still filed the motion. He then filed a Motion for Reconsideration and a Motion for Inhibition with the CA without first securing RREC's consent and authority. Again, without being authorized, he likewise filed an administrative complaint against several CA Justices and a petition assailing the constitutionality of Presidential Decree No. 774, both on RREC's behalf. Said unauthorized acts caused RREC's Board to request Atty. Roxas to voluntarily withdraw as counsel for the corporation and to finally terminate its retainer agreement with him when he refused. Even after he was terminated, Atty. Roxas still continued to appear and argue for RREC. Worse, he also threatened to sue the members of the RREC Board unless they reinstated him as the company's counsel.

In engaging the services of an attorney, the client reposes on him special powers of trust and confidence. Their relationship is strictly personal and highly confidential and fiduciary. The relation is of such delicate, exacting, and confidential nature that is required by necessity and public interest. Only by such confidentiality and protection will a person be encouraged to repose his confidence in an attorney. Thus, the preservation and protection of that relation will encourage a client to entrust his legal problems to an attorney, which is of paramount importance to the administration of justice.

In the instant case, Atty. Roxas's defiant attitude ultimately caused his client to lose its trust in him. He intentionally denied his client's requests on how to proceed with the case and insisted on doing

it his own way. He could not possibly use the supposed blanket authority given to him as a valid justification, especially on non-procedural matters, as in the case at bar, if he would be contradicting his client's trust and confidence in the process. Atty. Roxas clearly disregarded the express commands of the Code of Professional Responsibility *(CPR),* specifically Canon 17.

Canon 17 of the CPR states:**"A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him."**

KIMELDES GONZALES, *Complainant,* -versus- ATTY. PRISCO B. SANTOS, *Respondent.*
A.C. No. 10178, EN BANC, June 19, 2018, JARDELEZA, *J.*

The relationship between a lawyer and his client is highly fiduciary and demands great fidelity and good faith on the part of the lawyer. Rule 16.01 of the Code of Professional Responsibility (CPR) requires lawyers to account for all money and property collected or received for and from their clients. In addition, Rule 16.03 mandates that a lawyer shall deliver the funds and property of his client when due or upon demand.

In the present case, there is no doubt that respondent's services led to the issuance of a new title in complainant's name. Accordingly, and upon demand by complainant's representative, Josephine, respondent was expected to timely deliver the title to her. This, respondent failed to do.

FACTS:

Complainant bought a parcel of land in Tumaga, Zamboanga City. As she was then living in Quezon City, complainant appointed her sister, Josephine Gonzales (Josephine), to act as her representative in matters concerning said property. Josephine thereafter engaged the services of respondent to: (1) register the title in complainant's name; and (2) commence an ejectment suit against the occupants of the property. Josephine gave respondent a total of P60,000.00—P40,000.00 as fee for the transfer of title and the remaining P20,000.00 as filing fee for the ejectment case. Respondent signed two receipts acknowledging complainant's payments: (1) on June 12, 2007 for P15,000.00 as partial payment for the transfer of title; and (2) on June 22, 2007 for P25,000.00 as full payment for the transfer of title, and P20,000.00 as partial payment, the purpose of which was not indicated.

Complainant then entrusted the owner's duplicate copy of the Transfer Certificate of Title (TCT) to respondent for its cancellation. On August 2, 2007, a new title was issued in complainant's name. This, however, was never surrendered to Josephine, despite her efforts to claim it. Later, complainant discovered that her property had been mortgaged to A88 Credit Corporation by one Norena F. Bagui (Norena), who turned out to be respondent's relative. It appears that Norena used a forged special power of attorney to effect said mortgage.

Moreover, complainant learned that respondent never filed an ejectment case against the occupants of her property despite receipt of the corresponding filing fees. Investigating Commissioner Cachapero recommended that respondent be found guilty as charged and suspended from the practice of law for three years.

ISSUE:

Whether respondent is liable for violating the Code of Professional Responsibility. (YES)

RULING:

The relationship between a lawyer and his client is highly fiduciary and demands great fidelity and good faith on the part of the lawyer. Rule 16.01 of the Code of Professional Responsibility (CPR) requires lawyers to account for all money and property collected or received for and from their clients. In addition, Rule 16.03 mandates that a lawyer shall deliver the funds and property of his client when due or upon demand.

In the present case, there is no doubt that respondent's services led to the issuance of a new title in complainant's name. Accordingly, and upon demand by complainant's representative, Josephine, respondent was expected to timely deliver the title to her. This, respondent failed to do.

Moreover, Canon 17 of the CPR directs a lawyer to be mindful of the trust and confidence reposed in him. In the present case, it is uncontested that respondent received an additional P20,000.00 from complainant. Respondent, however, denied that it is payment for the filing of an ejectment suit against the occupants of complainant's property. Nonetheless, he does not proffer any reason to explain why such amount was given him. As this is a "he said, she said" scenario, the Supreme Court found complainant's version more logical and convincing. It is incredible for respondent to receive an additional P20,000.00 without a clear reason for its payment.

UNITED COCONUT PLANTERS BANK, *Complainant,* -versus- ATTY. LAURO G. NOEL, *Respondent.*

A.C. No. 3951, EN BANC, June 19, 2018, GESMUNDO, *J.*

It is axiomatic that no lawyer is obliged to act either as adviser or advocate for every person who may wish to become his client. However, once he 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 must serve the client with competence and diligence, and champion the latter's cause with wholehearted fidelity, care, and devotion.

Respondent's conduct shows inexcusable negligence. He grossly neglected his duty as counsel to the extreme detriment of his client. He willingly and knowingly allowed the default order to attain finality and he allowed judgment to be rendered against his client on the basis of ex parte evidence. He also willingly and knowingly allowed said judgment to become final and executory. He failed to assert any of the defenses and remedies available to his client under the applicable laws by his failure to file an answer to the complaint and his subsequent failure to file a comment to the application for preliminary injunction. This constitutes inexcusable negligence warranting an exercise by the Court of its power to discipline him.

FACTS:

Complainant retained the legal services of respondent in a case for injunction and damages with writ of preliminary injunction and prayer for temporary restraining order (LMWD case) filed by

Leyte Metro Water District (LMWD) before the Regional Trial Court of Palo, Leyte. Respondent, on behalf of complainant, attended the hearing in connection with the LMWD case. During the said hearing, respondent promised to file a comment on the application for preliminary injunction within ten (10) days. Respondent failed to file the promised comment. Respondent also failed to file an answer to the complaint. Thus, LMWD's counsel, Atty. Francisco P. Martinez, moved to declare complainant in default. The motion to declare complainant in default was granted and LMWD was subsequently allowed to present evidence *exparte*. The decision in the said case was served on complainant. It referred the said decision to respondent, who assured complainant's Branch Manager in Tacloban, Mr. Francisco Cupin, Jr., that he need not worry since respondent would take care of everything. A writ of execution was then served on the manager of complainant's Tacloban Branch. Again, the writ of execution was referred by complainant's Branch Manager to respondent, who once again reassured him that everything was alright and that he would take care of it.

The sheriff enforced the writ of execution. Complainant was forced to open a savings account in the name of said sheriff to satisfy the judgment. Hence, complainant filed herein complaint for disbarment against respondent.

ISSUE:

Whether respondent committed culpable negligence in failing to file an answer on behalf of complainant in the LMWD case for which reason complainant was declared in default and judgment rendered against it on the basis *of ex parte* evidence. (YES)

RULING:

Canon 17 of the Code provides that "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, in turn, imposes upon a lawyer the duty to serve his client with competence and diligence. Further, Rule 18.03, Canon 18 expressly states that "a lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable." It is axiomatic that no lawyer is obliged to act either as adviser or advocate for every person who may wish to become his client. He has the right to decline employment, subject, however, to Canon 14 of the Code. However, once he 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 must serve the client with competence and diligence, and champion the latter's cause with wholehearted fidelity, care, and devotion.

Respondent's conduct shows inexcusable negligence. He grossly neglected his duty as counsel to the extreme detriment of his client. He willingly and knowingly allowed the default order to attain finality and he allowed judgment to be rendered against his client on the basis of*ex parte* evidence. He also willingly and knowingly allowed said judgment to become final and executory. He failed to assert any of the defenses and remedies available to his client under the applicable laws by his failure to file an answer to the complaint and his subsequent failure to file a comment to the application for preliminary injunction. This constitutes inexcusable negligence warranting an exercise by the Court of its power to discipline him.

RODOLFO M. YUMANG, CYNTHIA V. YUMANG and ARLENE TABULA, *Complainants,* -versus-ATTY. EDWIN M. ALAESTANTE, *Respondent.*
A.C. No. 10992, EN BANC, June 19, 2018, DEL CASTILLO, *J.*

BERLIN V. GABERTAN and HIGINO GABERTAN, *Complainants,* -versus-ATTY. EDWIN M. ALAESTANTE, *Respondent.*
A.C. No. 10993, EN BANC, June 19, 2018, DEL CASTILLO, *J.*

In Pacana, Jr. v. Atty. Pascual-Lopez, the Court held that documentary formalism is not an essential element in the employment of an attorney; the contract may be expressed or implied. To establish the relation, ***it is sufficient that the advice and assistance of an attorney is sought and received in any matter pertinent to his profession****. In this case, Atty. Alaestante did not deny Berlin's claim that he represented Berlin in a civil case.*

*Atty. Alaestante****likewise violated Rule 8.01 of the Code of Professional Responsibility*** *which states that "a lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper."*

In the letter sent by Atty. Alaestante, he did not only employ intemperate or unbridled language but was also guilty of corner-cutting unprofessionally. He directly asked the Secretary of Justice to intervene with the said cases which showed his propensity for disregarding the rules of procedure which had been formulated precisely to regulate and govern legal and judicial processes properly.

FACTS:

Two administrative cases for disbarment were filed against Atty. Edwin Alaestante by Rodolfo Yumang, Cynthia Yumang and Arlene Tabula in AC 10992, and Berlin Gabertan and HiginoGabertan in A.C. 10993.

A.C. No. 10992:
Atty. Alaestante wrote a letter to DOJ Secretary Leila de Lima requesting for preliminary investigation and/or prosecution of Cynthia Yumang for the crimes of syndicated estafa, qualified theft and grave threats. Atty. Alaestante's clients Ernesto and Danilo executed a Joint Complaint Affidavit against Cynthia for the said crimes. Cynthia and her husband Rodolfo filed a complaint against Rodolfo, Ernesto and Danilo for libel as the letter contained scurrilous statements against Cynthia. Ernesto and Danio denied any knowledge of the said letter.

Atty. Alaestante admitted that he wrote the letter but insisted that the same was privileged communication as it intended to protect the interests of his clients. The DOJ dismissed the complaint filed by Ernesto and Danilo against Cynthia. The Office of the City Prosecutor on the other hand found probable cause to indict Atty. Alaestante, Danilo, and Ernesto for the crime of libel.

Cynthia, Rodolfo and Arlene claimed that Atty. Alaestante violated his Oath of Office and the Code of Professional Responsibility when he wrote the malicious and libelous letter.

A.C. No. 10993:
Berlin and Higino declared that they were the respondents in the alleged syndicated estafa, grave threats and qualified theft cases together with their relatives Cynthia and Arlene. They also claimed

that they had previously engaged Atty. Alaestante's legal services in other cases. When asked about the letter, Atty. Alaestante told them not to worry and promised to draft the appropriate pleadings for their defense. According to Higino, Atty. Alaestante's act of preparing their pleadings in the said cases were violative of the proscription against lawyers representing conflicting interests since he was the same lawyer who drafted the complaint against them in these cases.

Atty. Alaestante denied that he was the defense counsel for Berlin and Higino in the syndicated estafa, grave threats and qualified theft cases.

The Investigating Commissioner recommended Atty. Alaestante's suspension from the practice of law in connection with the 2 disbarment cases considering that the letter sent was malicious and libelous thus constituted gross evident bad faith and that Atty. Alaestante represented new clients whose interest oppose those of a former client. The IBP Board of Governors adopted the Investigating Commissioner's recommendation.

ISSUE:

Whether Atty. Edwin Alaestante be suspended from the practice of law. (YES)

RULING:

In *Pacana, Jr. v. Atty. Pascual-Lopez,* the Court held that documentary formalism is not an essential element in the employment of an attorney; the contract may be expressed or implied. To establish the relation, **it is sufficient that the advice and assistance of an attorney is sought and received in any matter pertinent to his profession**. In this case, Atty. Alaestante did not deny Berlin's claim that he represented Berlin in a civil case.

A lawyer is forbidden from representing conflicting interests **except by written consent of all concerned given after a full disclosure of the facts.** 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. Lawyers are expected not only to keep inviolate the client's confidence, but also to avoid the appearance of impropriety 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. The absence of monetary consideration does not exempt lawyers from complying with the prohibition against pursuing cases with conflicting interests. **The prohibition attaches from the moment the attorney-client relationship is established and extends even beyond the duration of the professional relationship.**

Atty. Alaestante**likewise violated Rule 8.01 of the Code of Professional Responsibility** which states that "a lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper."

In the letter sent by Atty. Alaestante, he did not only employ intemperate or unbridled language but was also guilty of corner-cutting unprofessionally. He directly asked the Secretary of Justice to intervene with the said cases which showed his propensity for disregarding the rules of procedure which had been formulated precisely to regulate and govern legal and judicial processes properly.

BSA TOWER CONDOMINIUM CORPORATION, *Complainant,* -versus- ATTY. ALBERTO CELESTINO B. REYES II, *Respondent.*
A.C. No. 11944, SECOND DIVISION, June 20, 2018, PERALTA, *J.*

In Aniñon v. Atty. Sabitsana, Jr., the Court laid down the tests to determine if a lawyer is guilty of representing conflicting interests between and among his clients. ***One is whether the acceptance of a new relation would prevent the full discharge of a lawyer's duty of undivided fidelity and loyalty to the client or invite suspicion of unfaithfulness or double-dealing in the performance of that duty.*** *Another test is* ***whether a lawyer would be called upon in the new relation to use against a former client any confidential information acquired through their connection or previous employment.***

In this case, the RTC had ruled that BSA Tower is even the one liable to Atty. Reyes in the amount of P1,920,000.00. With regard to the alleged conflict of interest, there was ***no evidence that*** *would show that, at the time Atty. Reyes was acting as Ilusorio's counsel,* ***he used confidential information*** *that he had obtained from BSA Tower when he was still the corporation's Corporate Secretary. Atty, Reyes's relationship with Ilusorio****would not require him to disclose matters obtained during his engagement as counsel or secretary of the corporation.*** *This would* ***neither prevent the full discharge of his duties as a lawyer or invite suspicion of double-dealing.***

FACTS:

BSA Tower Condominium Corporation alleged that it hired Atty. Alberto Reyes to settle its real estate tax problems with the City of Makati. It alleged that Atty. Reyes obtained P25 million from BSA Tower for the payment of expenses in connection with his duties. Atty. Reyes was able to account for P5 million thus violated Rule 16.01 of the Code of Professional Responsibility.

Atty. Reyes also entered his appearance as counsel for BSA Tower in a civil case which was an action for reimbursement of the advances given by one Ilusorio to BSA Tower as payment of its utility bills. He allegedly took the witness stand and testified against the company. BSA Tower filed a Motion to Expunge the Testimony against Reyes since the latter never obtained its written consent or waiver in the matter of him representing Ilusorio in said case. Atty. Reyes allegedly violated the rules under Code of Professional Responsibility on conflict of interest.

Atty. Reyes claimed that BSA Tower never paid him his contingent fee, so he filed a complaint with the Makati RTC which later on ordered BSA Tower to pay him the amount of P1,920,000.000 plus legal interest. Reyes also claimed that he had asked the BSA Tower's authorized representative if the corporation had any objection to his appearance as Ilusorio's counsel. The representative said that she had none. BSA Tower also did not object when he formally entered his appearance in said civil case.

The Commission of Bar Discipline of the IBP recommended the dismissal of the disbarment complaint.

ISSUE:

Whether the disbarment complaint against Atty. Reyes should be dismissed. (YES)

RULING:

In Aniñon v. Atty. Sabitsana, Jr., the Court laid down the tests to determine if a lawyer is guilty of representing conflicting interests between and among his clients. **One is whether the acceptance of a new relation would prevent the full discharge of a lawyer's duty of undivided fidelity and loyalty to the client or invite suspicion of unfaithfulness or double-dealing in the performance of that duty.** Another test is **whether a lawyer would be called upon in the new relation to use against a former client any confidential information acquired through their connection or previous employment.**

In this case, the RTC had ruled that BSA Tower is even the one liable to Atty. Reyes in the amount of P1,920,000.00. With regard to the alleged conflict of interest, there was no evidence that would show that, at the time Atty. Reyes was acting as Ilusorio's counsel, he used confidential information that he had obtained from BSA Tower when he was still the corporation's Corporate Secretary. Atty, Reyes's relationship with Ilusorio would not require him to disclose matters obtained during his engagement as counsel or secretary of the corporation. This would neither prevent the full discharge of his duties as a lawyer or invite suspicion of double-dealing.

Disciplinary proceedings against lawyers are sui generis. Neither purely civil nor purely criminal, they do not involve a trial of an action or a suit but is rather an investigation by the Court into the conduct of one of its officers. The quantum of proof necessary for a finding of guilt is substantial evidence, which the complainant has the burden of proving. BSA Tower failed to discharge said burden of proof. The issues which BSA Tower presented in this case had already been submitted for judicial resolution and the courts had ruled in favor of Reyes. Hence the Court finds that the acts of Reyes are not tantamount to a violation of any of the CPR.

EDMUND BALMACEDA, *Complainant,* -versus- ATTY. ROMEO Z. USON, *Respondent.*
A.C. No. 12025, SECOND DIVISION, June 20, 2018, REYES, JR., *J.*

The very moment a lawyer agrees to be engaged as a counsel, he is obliged to handle the same with utmost diligence and competence until the conclusion of the case. ***He is expected to exert his time and best efforts in order to assist his client in his legal predicament.*** *In this case, respondent reneged on his duty when he failed to file the ejectment case on behalf of the complainant despite full payment of his attorney's fees. When he agreed to be the counsel of the complainant, it only means that, based on the discussion and documents, he believed that complainant had a cause of action to file an ejectment case.*

Mere forgiveness, desistance or acquiescence of the client to the dismissal of the administrative proceedings ***will not ipso facto absolve the lawyer from liability*** *but by* ***establishing that no misconduct or negligence was committed.*** *In this case where the respondent admitted to receiving attorney's fees and failing to file a complaint for ejectment even after the lapse of two (2) years, the imposition of an administrative sanction is only proper.*

FACTS:

Complainant Edmund Balmaceda alleged that sometime in April 2012, he and a certain Carlos Agapito (Agapito) went to the office of the respondent to seek legal advice, concerning the supposed intrusion or illegal occupation of his brother, Antonio Balmaceda (Antonio), over a

property he owned, which he subsequently sold to Agapito. At the conclusion of their meeting, complainant and Agapito were convinced that the **filing of an ejectment case is the most appropriate legal measure to take and engaged the services of the respondent as counsel** for a fee of P75,000.00.

Despite the full payment of the attorney's fees, the respondent did not file an ejectment case against Antonio. Two years had lapsed, however, but no ejectment case was ever filed by the respondent. Because of this, the complainant sent the respondent demand letters to return the attorney's fees but to no avail.

Respondent alleged that he presented to Antonio the deed of extrajudicial settlement and waiver of rights in favor of the complainant, as well the latter's certificate of title over the property, and the deed of absolute sale in favor of Agapito and his wife. Antonio was taken aback upon learning of the documents and told the respondent that they are going to take legal action as they were co-owners of the property and that it is better for him not to meddle into the feud.

For several times, the complainant went to his office to insist on the filing of the case but he repeatedly told him he can no longer proceed with the same especially that the **supposed co-owners of the property expressed the intention to file an action for the annulment of title, deed of extrajudicial settlement and deed of sale** against the complainant and Agapito.

During the preliminary conference, the attorney-in-fact of the complainant and the respondent expressed their mutual desire to terminate the case. More even, the **respondent returned an amount of PhP50,000.**

IBP Investigating Commissioner recommended that the complaint be dismissed. IBP Board of Governors reversed and recommended a penalty of 6 months suspension.

ISSUES:

1. Whether the fact that the occupant (Antonio) of the property intends to bring the matter to the court is a compelling reason to prevent Atty. Uson from filing the ejectment case. (NO)

2. Whether the fact that Atty. Uson already returned a part of attorney's fees would exonerate him from administrative liability. (NO)

RULINGS:

1. At the very moment a lawyer agrees to be engaged as a counsel, he is obliged to handle the same with utmost diligence and competence until the conclusion of the case. He is expected to exert his time and best efforts in order to assist his client in his legal predicament.

> **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 instant case, the **respondent reneged on his duty when he failed to file the ejectment case on behalf of the complainant despite full payment of his attorney's fees.** His negligence caused his client to lose his cause of action since the prescriptive period of one year to file the ejectment case had already lapsed without him ling the necessary complaint in court.

Before respondent was engaged as counsel, he had a discussion with the complainant about his legal concern and had a good opportunity to examine the documents presented to him by his prospective client. **When he agreed to be the counsel of the complainant, it only means that, based on the discussion and documents, he believed that complainant had a cause of action to file an ejectment case.**

Plainly speaking, the respondent cannot justify his negligence by claiming that the occupants pursued their threat to file a case in court. There is simply no connection between his duty as counsel to the complainant with the supposed defendants' threat to retaliate with a separate legal action.

2. That the respondent eventually returned a portion of the money to the complainant and both have signified consent to the termination of the case do not automatically exonerate him from administrative liability. **Restitution may have earned him the condonation of his client but, being a member of the Integrated Bar of the Philippines, he is also answerable to the legal profession.** Membership in the bar, being imbued with public interest, holds him accountable not only to his client but also to the court, the legal profession and the society at large.

It is also well to remember that in Canon 16 of the Code of Professional Responsibility, it is provided that a lawyer only holds in trust all moneys and properties of his client that may come into his possession.

To be clear, the mere forgiveness, desistance or acquiescence of the client to the dismissal of the administrative proceedings will not ipso facto absolve the lawyer from liability but by establishing that no misconduct or negligence was committed. In this case where the respondent admitted to receiving attorney's fees and failing to file a complaint for ejectment even after the lapse of two (2) years, the imposition of an administrative sanction is only proper.

JAIME S. DE BORJA, complainant, **vs. ATTY. RAMON R. MENDEZ, JR.**, respondent.|||

A.C. No. 11185, ,July 4, 2018, SECOND DIVISION, Peralta J.

Canon 18 of the Code of Professional Responsibility for Lawyers states that "A lawyer shall serve his client with competence and diligence." Rule 18.03 thereof stresses:

> *A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.*

In the instant case, 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.

Canon 16 of the Code requires a lawyer to hold in trust all moneys and properties of his client that may come into his possession. Rule 16.03 of the Code obligates a lawyer to deliver the client's funds and property when due or upon demand.

Not only did Atty. Mendez failed to use the money for its intended purpose, and return the money after demand, he also did not give Jaime any reply regarding the latter's demands.

FACTS: Sometime in 2004, 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.||| However, the complaint for reconveyance was dismissed, thus, Atty. Mendez filed a notice of appeal. On October 20, 2011, the Court of Appeals ordered the Heirs of DeBorja to file their Appellant's Brief within forty-five (45) days from receipt of the notice|.

On February 3, 2012, Jaime was surprised to receive a Resolution dated January 27, 2012 from the Court of Appeals 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. Atty. Mendez assured him that he will file the motion for reconsideration based on non-receipt of the notice,and will subsequently file the appellant's brief.

Unsatisfied, Jaime went to the Court of Appeals and the Postal Office of Caloocan. He discovered that the notice to file appellant's brief was in fact received by one Lastimosa, a secretary of the firm Jaime presented a copy of the Certification issued by the Caloocan Central Post Office showing that Lastimosa received on October 28, 2011 the notice from the Court of Appeals.

Disappointed and losing 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). Unable to get a reply from Atty. Mendez even after six months, on August 2, 2012, Jaime wrote anew to Atty. Mendez and demanded the return of the money. Thus, the instant administrative complaint against Atty. Mendez for incompetence and malpractice|||

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.|||

ISSUE: W/N Atty. Mendez violated Canon 18 and 16 of the Code of Professional Responsibility

RULING:

Canon 18 of the Code of Professional Responsibility for Lawyers states that *"A lawyer shall serve his client with competence and diligence."* Rule 18.03 thereof stresses:

> A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

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. An attorney is bound to protect his clients' interest to the best of his ability and with utmost diligence. 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

Other than Atty. Mendez' allegation of non-receipt of the notice, he has failed to duly present any reasonable excuse for the non-filing of the appellant's brief despite notice, thus, the allegation of negligence on his part in filing the appellant's brief remains uncontroverted. 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.

Other than the Court's finding of negligence, the Court also finds 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.||| In line with the highly fiduciary nature of an attorney-client relationship, Canon 16 of the Code requires a lawyer to hold in trust all moneys and properties of his client that may come into his possession. Rule 16.03 of the Code obligates a lawyer to deliver the client's funds and property when due or upon demand.

Where a client gives money to his lawyer for a specific purpose, such as: to file an action, to appeal an adverse judgment, to consummate a settlement, or to pay a purchase price for a parcel of land, the lawyer, upon failure to spend the money entrusted to him or her for the purpose, must immediately return the said money entrusted by the client

In the present case, Atty. Mendez received money from Jaime for the titling of property covered by Tax Declaration No. D-006-01404 on August 30, 2009. However, despite several oral and written demands to Atty. Mendez , the same fell on deaf ears. Not only did Atty. Mendez failed to use the money for its intended purpose, and return the money after demand, he also did not give Jaime any reply regarding the latter's demands.

The Court, likewise, take note that 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.

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

JERRY M. PALENCIA, *complainant*, -versus- PEDRO L. LINSANGAN, ATTY. GERARD M. LINSANGAN, and ATTY. GLENDA M. LINSANGAN-BINOYA *respondents.*
A.C. No. 10557, EN BANC, July 10, 2018, PER CURIAM, *J.*

Thus, "ambulance chasing," or the solicitation of almost any kind of business by an attorney, personally or through an agent, in order to gain employment, is proscribed. Here, there is sufficient evidence to show that respondents violated these rules. No less than their former paralegal Jesherel admitted that respondent Atty. Pedro Linsangan came with her and another paralegal, to the hospital several times to convince complainant to hire their services. In employing paralegals to encourage complainant to file le 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 relationship between a lawyer and his client is highly fiduciary. This relationship holds a lawyer to a great degree of fidelity and good faith especially in handling money or property of his clients. Thus, ***Canon 16*** *and its rules remind a lawyer to:* ***(1) hold in trust all moneys and properties of his client that may come into his possession; (2) deliver the funds and property of his client when due or upon demand subject to his retaining lien; and (3) account for all money or property collected or received for or from his client.*** *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.*

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.***

FACTS

Complainant was an overseas Filipino worker seafarer who was seriously injured during work when he fell into the elevator shaft of the vessel M/T "Panos G." After initial treatment in Singapore, complainant was discharged and flown to the Philippines to continue his medical treatment. While confined at the hospital, one "Moises," and later Jesherel, 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, 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%.

Respondents and Gurbani & Co. also filed a tort case against the owners of "Panos G" before the High Court of Singapore (Singapore case). 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: (1) $5,000.00 as payment to Justice Gancayco; (2) their attorney's fees equivalent to 35%; and (3) other expenses, leaving the net amount of US$18,132.43 for complainant. Respondents tendered the amount of US$20,756.05 (representing the US$18,132.43) to complainant, which the latter refused.

Complainant filed the subject letter-complaint with the IBP-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"

The IBP-CBD in its Report and Recommendation ruled that respondents violated the canons of the CPR: (1) in soliciting legal business through their agents while complainant was in the hospital; (2) in failing to account for, and deliver the funds and property of his client when due or upon demand; and (3) in hiring the services of a foreign law firm and another lawyer without prior knowledge and

consent of complainant of the fees and expenses to be incurred. The IBP Board of Governors adopted the Report and Recommendation.

ISSUE

Whether or not (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" warrants the imposition of disciplinary action. (YES)

RULING

A lawyer in making known his legal services must do so in a dignified manner. They are prohibited from soliciting cases for the purpose of gain, either personally or through paid agents or brokers. The CPR explicitly states that "a lawyer shall not do or permit to be done any act designed primarily to solicit legal business." Corollary to this duty is for lawyers not to encourage any suit or proceeding for any corrupt motive or interest. Thus, "ambulance chasing," or the solicitation of almost any kind of business by an attorney, personally or through an agent, in order to gain employment, is proscribed.

Here, there is sufficient evidence to show that respondents violated these rules. No less than their former paralegal Jesherel admitted that respondent Atty. Pedro Linsangan came with her and another paralegal, to the hospital several times to convince complainant to hire their services. In employing paralegals to encourage complainant to file le 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 relationship between a lawyer and his client is highly fiduciary. This relationship holds a lawyer to a great degree of fidelity and good faith especially in handling money or property of his clients. Thus, **Canon 16** and its rules remind a lawyer to: **(1) hold in trust all moneys and properties of his client that may come into his possession; (2) deliver the funds and property of his client when due or upon demand subject to his retaining lien; and (3) account for all money or property collected or received for or from his client.** 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.

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. 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. 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.

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.**

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. Respondents' flagrant and malicious refusal to comply with the CPR amounts to gross misconduct. This warrants the imposition of disciplinary sanctions.

MARTIN J. SIOSON, *complainant* **-versus- ATTY. DIONISIO B. APOYA, JR.,** *respondent.*

AC No. 12044, SECOND DIVISION, 23 July 2018, CAGUIOA, J.

Under Rule 16.01, when a client gives money to his lawyer for a specific purpose, such as to file an action, appeal an adverse judgment, consummate a settlement, or pay the purchase price of a parcel of land, the lawyer should, upon failure to take such step and spend the money for it, immediately return the money to his client. In this case, after receiving the amount of P10,000.00 as acceptance fee, Atty. Apoya, Jr. failed to render any legal service in relation to the case of Sioson. Despite Sioson's repeated follow-ups, Atty. Apoya, Jr. unjustifiably failed to update Sioson of the status of the case and to return to him the documents the latter gave him in connection with the case pending before the DOJ.

FACTS:

Through a referral from a friend, Martin Sioson engaged the services of Atty. Apoya, Jr. in handling Sioson's complaint for Qualified Theft. Atty. Apoya, Jr. required the payment of acceptance fee, appearance fee, and success fee. Sioson paid Atty. Apoya, Jr.

Sioson updated Atty. Apoya, Jr. on the status of the case. Atty. Apoya, Jr. consistently told Sioson to wait for the order of the DOJ notifying the latter of the Notice of Entry of Appearance he had filed. When Sioson went to the DOJ to personally follow up his case, he discovered that Atty. Apoya, Jr. never filed an Entry of Appearance. Sioson continued to demand Atty. Apoya, Jr. the return of the P10 000 he paid but the latter refused to answer any of his letters or calls.

Sioson filed a disbarment case against Atty. Apoya, Jr. In his defense, he alleged that there is no attorney-client relationship between them because he never met Sioson. Consequently, he filed a complaint for grave threats and grave coercion against Sioson.

The IBP Board of Governors suspended Atty. Apoya, Jr from the practice of law.

ISSUE:

Whether or not Atty. Apoya, Jr. should be suspended from the practice of law. (YES)

RULING:

Atty. Apoya, Jr.'s refusal to return Sioson's money upon demand and his failure to respond to Sioson's calls, text messages and letters asking for a status update on the case filed before the DOJ reveal Atty. Apoya, Jr.'s failure to live up to his duties as a lawyer in consonance with the strictures of his oath and the Code of Professional Responsibility.

The acts committed by Atty. Apoya, Jr. all squarely within the prohibition of Rule 1.01, Rule 16.01, and Rule 18.03 and Rule 18.04 of the Code of Professional Responsibility. Particularly under Rule 16.01, when a client gives money to his lawyer for a specific purpose, such as to file an action, appeal an adverse judgment, consummate a settlement, or pay the purchase price of a parcel of land, the lawyer should, upon failure to take such step and spend the money for it, immediately return the money to his client.

In this case, after receiving the amount of P10,000.00 as acceptance fee, Atty. Apoya, Jr. failed to render any legal service in relation to the case of Sioson. Despite Sioson's repeated follow-ups, Atty. Apoya, Jr. unjustifiably failed to update Sioson of the status of the case and to return to him the documents the latter gave him in connection with the case pending before the DOJ.

BUENAVISTA PROPERTIES, INC., *Complainant*, *v.* ATTY. AMADO B. DELORIA, *Respondent*.

A.C. No. 12160, EN BANC August 14, 2018, PERLAS-BERNABE, *J.*:

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.

In this case, Atty. Deloria represented Menguito, the President of LSDC, in the criminal case for estafa that the Spouses Flores filed against her. Subsequently, however, Atty. Deloria filed a complaint for delivery of title against BPI on behalf of Corazon before the HLURB. As such, Atty. Deloria simultaneously represented Menguito and Corazon despite their conflicting interests, considering that Corazon's estafa case against Menguito was premised on the latter's and LSDC's alleged misrepresentation of ownership over the lots sold and LSDC's eventual failure to deliver the title. It must be stressed that it was LSDC that obligated itself to ensure the transfer of the ownership of the purchased lot to Corazon, a lot buyer, pursuant to the Contract to Sell executed between them. Thus, Atty. Deloria's simultaneous representation of Menguito and Corazon sans their written consent after a full disclosure of the facts violated the rules on conflict of interest.

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 pendentia are present or where a final judgment in one case will amount to res judicata in another. They are as follows: (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.

In the civil case before the RTC, Atty. Deloria, on behalf of LSDC, filed an answer with counterclaim and prayed for the issuance of a writ of preliminary mandatory injunction to direct BPI to execute the deeds of absolute sale and release the titles covering the purchased subdivided lots. Notwithstanding the RTC's denial of LSDC's application for a writ of preliminary mandatory injunction in an Order dated August 11, 1998, as well as the pendency of the main case therein, Atty. Deloria nonetheless lodged a complaint[70] before the HLURB praying for the same relief as that pleaded for in its answer with counterclaim – to compel BPI to execute deeds of absolute sale and deliver the titles over the subdivided lots. Clearly, the elements of litis pendentia are present, considering: (a) the identity of parties, i.e., BPI and LSDC; (b) identity of rights or causes of action, i.e., BPI and LSDC being parties to the JVA, from which sprang their respective rights and obligations; and (c) identity of reliefs sought, i.e., to compel BPI to execute the deeds of absolute sale and deliver the titles of the purchased lots. In fact, the HLURB in its Decision dated September 27, 2000 dismissed LSDC's complaint based on the same ground.

In this case, Corazon attested to the fact that Atty. Deloria failed to communicate with and inform her, as his client, about her complaint against BPI before the HLURB. Likewise, Atty. Deloria failed to file the required position paper and draft decision before the HLURB. As such, he neglected the legal matters entrusted to him and failed to serve his client with competence and diligence, for which he must be clearly held administratively liable. Thus violating Canon 17, 18, 18.03 and 18.04.

FACTS:

BPI prayed for the suspension or disbarment of Atty. Deloria for committing multiple violations of the CPR, to wit: (a) Rule 1.03, for encouraging the lot buyers to file cases against BPI in order to deflect the charges that the lot buyers have against LSDC; (b) Rules 2.03 and 8.02 for convincing the Spouses Flores to withdraw the *estafa* case against Menguito and to appoint him as lawyer to file a case against BPI instead; (c) Rules 1.01 and 10.02 when he resorted to lies with respect to the employment of Hesola and for misquoting the JVA in his pleadings; (d) Rule 1.01 for inducing the lot buyers to file cases against BPI; (e) Rules 15.01 and 15.03 for acting as counsel for LSDC and the lot buyers at the same time; (j) Rule 12.02 for having filed two (2) cases involving the same parties, issues, facts, and reliefs; (g) Canon 17 and Rules 18.03 and 18.04,Canon 18, for failing to file the necessary pleadings on behalf of Corazon in the HLURB case; and (h) Rule 6.03 for acting as counsel for LSDC after leaving the government service as HLURB Commissioner.

The Investigating Commissioner found that Atty. Deloria did not violate Rules 1.03, 2.03, and 8.02 of the CPR on the ground of insufficiency of evidence. Likewise, Atty. Deloria was found not guilty of violating Rules 1.01 and 10.02 of the CPR as BPI failed to show that he had a role in the wrongful designation of Hesola or that he knowingly misquoted the JVA in a position paper he filed with the HLURB.

However, the Investigating Commissioner found Atty. Deloria *guilty* of violating Rules 15.01 and 15.03 of the CPR for representing conflicting interests. Records show that on March 30, 2004, Corazon filed the *estafa* case against Menguito, President of LSDC, whose lawyer was Atty. Deloria. The basis for the *estafa* charges was Menguito's misrepresentation that she was the owner of the lot

Corazon purchased. Thereafter, or on June 15, 2004, Atty. Deloria, *on behalf of Corazon*, filed a complaint for delivery of title with the HLURB against BPI with LSDC as third-party respondent. Thus, Atty. Deloria simultaneously represented LSDC President Menguito and Corazon, a lot buyer, who had conflicting interests.

Similarly, the Investigating Commissioner found Atty. Deloria liable for violating Rule 12.02 of the CPR on forum shopping, having prayed in its answer with counterclaim with prayer for the issuance of a writ of preliminary mandatory injunction in the *civil case* before the RTC that BPI be directed to execute the deeds of absolute sale and deliver the titles covering the subdivided lots, and thereafter, when the prayer for injunction was denied, filed a complaint before the HLURB praying for the same reliefs. In fact, the HLURB eventually dismissed the complaint filed before it on the ground of *litis pendentia*, finding the presence of all the elements therefor.[49]

Finally, Atty. Deloria was also found to have violated Canon 17 and Rules 18.03 and 18.04, Canon 18 of the CPR for his failure to file the necessary pleadings for his client and to inform and communicate with her, as attested to by Corazon in her *Sinumpaang Salaysay.*

ISSUE:

Whether or not grounds exist to hold Atty. Deloria administratively liable for any violations of the CPR. (YES)

RULING:

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.

In this case, Atty. Deloria represented Menguito, the President of LSDC, in the criminal case for estafa that the Spouses Flores filed against her. Subsequently, however, Atty. Deloria filed a complaint for delivery of title against BPI on behalf of Corazon before the HLURB. As such, Atty. Deloria simultaneously represented Menguito and Corazon despite their conflicting interests, considering that Corazon's estafa case against Menguito was premised on the latter's and LSDC's alleged misrepresentation of ownership over the lots sold and LSDC's eventual failure to deliver the title. It must be stressed that it was LSDC that obligated itself to ensure the transfer of the ownership of the purchased lot to Corazon, a lot buyer, pursuant to the Contract to Sell executed between them. Thus, Atty. Deloria's simultaneous representation of Menguito and Corazon sans their written consent after a full disclosure of the facts violated the rules on conflict of interest.

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 pendentia are present or where a final judgment in one case will amount to res judicata in another. They are as follows: (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.

In the civil case before the RTC, Atty. Deloria, on behalf of LSDC, filed an answer with counterclaim and prayed for the issuance of a writ of preliminary mandatory injunction to direct BPI to execute the deeds of absolute sale and release the titles covering the purchased subdivided lots. Notwithstanding the RTC's denial of LSDC's application for a writ of preliminary mandatory injunction in an Order dated August 11, 1998, as well as the pendency of the main case therein, Atty. Deloria nonetheless lodged a complaint[70] before the HLURB praying for the same relief as that pleaded for in its answer with counterclaim – to compel BPI to execute deeds of absolute sale and deliver the titles over the subdivided lots. Clearly, the elements of litis pendentia are present, considering: (a) the identity of parties, i.e., BPI and LSDC; (b) identity of rights or causes of action, i.e., BPI and LSDC being parties to the JVA, from which sprang their respective rights and obligations; and (c) identity of reliefs sought, i.e., to compel BPI to execute the deeds of absolute sale and deliver the titles of the purchased lots. In fact, the HLURB in its Decision dated September 27, 2000 dismissed LSDC's complaint based on the same ground.

In this case, Corazon attested to the fact that Atty. Deloria failed to communicate with and inform her, as his client, about her complaint against BPI before the HLURB. Likewise, Atty. Deloria failed to file the required position paper and draft decision before the HLURB. As such, he neglected the legal matters entrusted to him and failed to serve his client with competence and diligence, for which he must be clearly held administratively liable. Thus violating Canon 17, 18, 18.03 and 18.04.

KENNETH R. MARIANO, *Complainant,* -versus- ATTY. JOSE N. LAKI, *Respondent.*

A.C. No. 11978 [Formerly CBD Case No. 10-2769], EN BANC, September 25, 2018, Per Curiam

When a lawyer collects or receives money from his client for a particular purpose, 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. Atty. Laki's failure to render an accounting, and to return the money if the intended purpose thereof did not materialize, constitutes a blatant disregard of Rule 16.01 of the CPR.

Moreover, Canon 11 states 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, while Rule 11.04 states that a lawyer shall not attribute to a Judge motives not supported by the record or have no materiality to the case. Atty. Laki's act of giving assurance to Mariano that he can secure a favorable decision without the latter's personal appearance because the petition will be filed in the RTC of Tarlac, which is allegedly presided by a "friendly" judge receptive to annulment cases give the implication that a favorable decision can be obtained merely on the basis of close ties with the judge and not necessarily on the merits. Without doubt, Atty. Laki's statements cast doubts on the integrity of the courts in the eyes of the public.

FACTS:

Kenneth R. Mariano (Mariano) approached and engaged the services of Atty. Jose N. Laki (Atty. Laki) for the filing of a petition for annulment of the latter's marriage. Atty. Laki then asked from Mariano a total of Php 160,000.00, representing a package deal for the former's professional fee, docket fee and expenses for the preparation and filing of the petition, subject to an advance

payment of Php 50,000.00. Mariano expressed his concern over the said amount but was persuaded by Atty. Laki's assurances, specifically how the latter assured him that he could secure a favorable decision even without Mariano's personal appearance since he will file the petition for annulment before the Regional Trial Court (RTC) of Tarlac which is presided by a "friendly judge" and is known to be receptive to annulment cases.

Believing in Atty. Laki's assurances, Mariano initially paid Atty. Laki the amount of Php 50,000.00. Upon Atty. Laki's relentless follow-ups to pay the remaining balance, Mariano made the succeeding payments in the amounts of P40,000.00 and P60,000.00, respectively. Almost a year thereafter, Mariano followed up with Atty. Laki the status of the petition. He then discovered that the petition has yet to be filed. Atty. Laki told him that the Presiding Judge of the RTC-Tarlac where he allegedly filed the petition has been dismissed by the Supreme Court, thus, he decided to withdraw the case since he did not expect the new presiding judge to be "friendly."

After several failed attempts to contact and meet Atty. Laki, Mariano then decided to demand for the return of the money he gave. Despite Mariano's demand to Atty. Laki to return his money, his demands were left unheeded. Atty. Laki promised Mariano that he would return the money in installments within two weeks because he still has to raise it, but Atty. Laki failed to make good of his promise. Later, Mariano's succeeding phone calls were rejected. Mariano also alleged that Atty. Laki's office in Guagua, Pampanga, was always closed. Aggrieved, Mariano filed a disbarment case against Atty. Laki.

The IBP-CBD recommended that Atty. Laki be disbarred.

ISSUE:

Whether or not Atty. Laki should be disbarred (YES)

RULING:

It must be emphasized anew that 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. When a lawyer collects or receives money from his client for a particular purpose, 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. Atty. Laki's failure to render an accounting, and to return the money if the intended purpose thereof did not materialize, constitutes a blatant disregard of Rule 16.01 of the CPR.

Moreover, Canon 11 states 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, while Rule 11.04 states that a lawyer shall not attribute to a Judge motives not supported by the record or have no materiality to the case. Atty. Laki's act of giving assurance to Mariano that he can secure a favorable decision without the latter's personal appearance because the petition will be filed in the RTC of Tarlac, which is allegedly presided by a "friendly" judge receptive to annulment cases give the implication that a favorable decision can be obtained merely on the basis of close ties with the judge and not necessarily on the merits. Without doubt, Atty. Laki's statements cast doubts on the integrity of the courts in the eyes of the public. By making false representation to his client, Atty. Laki not only

betrayed his client's trust but he also undermined the trust and faith of the public in the legal profession.

b. Attorney's fees
i. Acceptance fees
ii. Contingency fee arrangements

EUGENIO E. CORTEZ*, Complainant*, -versus-ATTY. HERNANDO P. CORTES*, Respondent.*
A.C. No. 9119, FIRST DIVISION, March 12, 2018, TIJAM, *J.*

A contingent fee arrangement is valid in this jurisdiction and is generally recognized as valid and binding but must be laid down in an express contract. The amount of contingent fee agreed upon by the parties is subject to the stipulation that counsel will be paid for his legal services only if the suit or litigation prospers.

FACTS:

Complainant alleged that he hired the services of respondent as his counsel in the illegal dismissal case against Philippine Explosives Corporation (PEC). He further alleged that he and Atty. Cortes had a handshake agreement on a 12% contingency fee as and by way of attorney's fees. The NLRC decided in favour of complainant and the Court of Appeals affirmed the decision. The said decision ordered PEC to pay complainant the total of P1,100,000 in three staggered payments through checks. During the maturity of the first check, complainant went to China Bank Las Pinas to open an account to deposit the check. He was together with respondent and his wife. Atty. Cortes asked complainant to wait outside the bank while he personally, for and in his behalf, facilitated the opening of the account. After thirty minutes, he was asked to go inside and sign a joint savings account with Atty. Cortes. Complainant alleged that when he was about to withdraw the amount of the initial check deposited, Atty. Cortes arrived with his wife and ordered the bank teller to hold off the transaction. When complainant asked why he did that, Atty. Cortes answered that 50% of the total awarded claims belongs to him as attorney's fees. When complainant questioned him, Atty. Cortes became hysterical and imposingly maintained that 50% of the total awarded claims belongs to him.

After hearing and submission of position papers, the IBP Commission on Bar Discipline recommended the suspension of Atty. Cortes. It ruled that a contingent fee arrangement should generally be in writing, and that contingent fees depend upon an express contract without which the lawyer can only recover on the basis of *quantum meruit.*

ISSUE:

Whether the acts complained of constitute misconduct on the part of Atty. Cortes, which would subject him to disciplinary action. (YES)

RULING:

A contingent fee arrangement is valid in this jurisdiction and is generally recognized as valid and binding but must be laid down in an express contract. The amount of contingent fee agreed upon by the parties is subject to the stipulation that counsel will be paid for his legal services only if the suit

or litigation prospers. A much higher compensation is allowed as contingent fee in consideration of the risk that the lawyer may get nothing if the suit fails. Contracts of this nature are permitted because they redound to the benefit of the poor client and the lawyer especially in cases where the client has meritorious cause of action, but no means with which to pay for legal services unless he can, with the sanction of law, make a contract for a contingent fee to be paid out of the proceeds of the litigation. Oftentimes, the contingent fee arrangement is the only means by which the poor and helpless can seek redress for injuries sustained and have their rights vindicated.

In this case, we note that the parties did not have an express contract as regards the payment of fees. Complainant alleges that the contingency fee was fixed at 12% via a handshake agreement, while Atty. Cortes counters that the agreement was 50%. Here, considering that complainant was amenable to a 12% contingency fee, and which we likewise deem to be the reasonable worth of the attorney's services rendered by Atty. Cortes under the circumstances, Atty. Cortes is hereby adjudged to return to complainant the amount he received in excess of 12% of the total award.

iii. Attorney's liens
iv. Fees and controversies with clients

EVELYN T. GOCOPIO, *Complainant*, -versus- ATTY. ARIEL D. MAGLALANG, *Respondent*

A.C. No. 10555, EN BANC, July 31, 2018, JARDELEZA, J.

A lawyer enjoys presumption of innocence and the burden of proof rests upon the complainant to satisfactorily prove the allegations through substantial evidence. The complainant failed to do so in this case.

FACTS:

Sometime in 2005, the complainant engaged the services of the respondent to represent her in relation to a property dispute involving 12 parcels of land. For being employed in Switzerland, she executed a General Power of Attorney, authorizing Atty. Maglalang to settle the controversy covering the properties including the filing for the petition to rescind the contract with damages.

Atty. Maglalang informed complainant that the petition is filed now in Regional Trial Court (RTC) in Bacolod City and the former requested and received an amount of P400,000, evidenced by an official receipt. For the respondent's rendering of legal service, including but not limited to, appearances and mediations in hearing, respondent received an amount of P114,000 and P84,000. Much to complainant's surprise, no petition has been filed nor pending in the RTC Bacolod. Respondent denied the charges being based on hearsay, untrue and without basis in fact. He asserted that he did not receive any amounts. He countered that without his knowledge and participation, Consuji, Gocopio's sister and former client, surreptitiously used his name and reputation and manipulated the supposed "engagement" of his services by issuing a falsified General Power of Attorney. As for the receipts, Consuji allegedly used his letterhead and billing statements in order to manipulate the same. In addition, respondent asserted that there exists no lawyer-client relationship between them. The IBP Board of Governors found that there exists such relationship and recommended the respondent's suspension.

ISSUE:

Whether Atty. Maglasang should be held liable for such actions (NO)

RULING:

A lawyer enjoys presumption of innocence and the burden of proof rests upon the complainant to satisfactorily prove the allegations through substantial evidence. The complainant failed to do so in this case.

The Court scrutinized the records and failed to find a single evidence which is an original copy. All documents on record submitted by complainant are indeed mere photocopies. The general rule is that photocopies of documents are inadmissible. Complainant only presented photocopies of General Power of Attorney she allegedly issued, as well as acknowledgement receipts issued by the former for the amounts he allegedly received. The Court sees that the evidence presented does not comply with the Best Evidence Rule.

Neither will the offer of respondent to restitute the monetary award be deemed an admission of guilt. An examination of the respondent's offer to restitute would clearly show that there was no admission of the acts being imputed against him. His offer was made to show his honest desire to have the case resolved immediately, and his admission, if any, was limited to his failure to immediately discover the manipulation of complainant's sister.

v. Quantum meruit

C. Suspension, disbarment and discipline of lawyers

1. Nature and characteristics of disciplinary actions against lawyers

THE OFFICE OF THE COURT ADMINISTRATOR, *Complainant*, -versus- MR. CRISPIN C. EGIPTO, JR., CLERK OF COURT IV, MUNICIPAL TRIAL COURT IN CITIES, PAGADIAN CITY, *Respondent*.
A.M. No. P-05-1938, January 30, 2018, EN BANC,PER CURIAM.

Factors such as the respondent's length of service, the respondent's acknowledgement of his or her infractions and feeling of remorse, family circumstances, humanitarian and equitable considerations, respondent's advanced age, among other things, have had varying significance in the Court's determination of the imposable penalty.

The compassion extended by the Court in these cases was not without legal basis. Section 53, Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service, grants the disciplining authority the discretion to consider mitigating circumstances in the imposition of the proper penalty.

FACTS:

On November 7, 2017, the Court found and declared the respondent guilty of gross neglect of duty, dishonesty and grave misconduct for failing to remit his collections on time and dismissed him from the service.

The respondent moves for the reconsideration of the decision particularly seeking the reduction of his penalty of dismissal with forfeiture of all his retirement benefits , to suspension of six months, or to a fine in an equitable amount **considering his service in the Judiciary for more than 36**

years; his unqualified and candid acknowledgement of his offense; his feeling of remorse; his full restitution of the shortages amounting to P98,652.81; his advancing age and medical condition; and his nearing the mandatory retirement by January 4, 2019.

ISSUE:

Whether the Court may grant the motion for reconsideration based on the presence of mitigating factors. (YES)

RULING:

The Court grants the motion for reconsideration. In *Arganosa-Maniego v. Salinas*, the Court explained: [I]n several administrative cases, the Court has refrained from imposing the actual penalties in the presence of mitigating factors. Factors such as the respondent's length of service, the respondent's acknowledgement of his or her infractions and feeling of remorse, family circumstances, humanitarian and equitable considerations, respondent's advanced age, among other things, have had varying significance in the Court's determination of the imposable penalty.

The compassion extended by the Court in these cases was not without legal basis. Section 53, Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service, grants the disciplining authority the discretion to consider mitigating circumstances in the imposition of the proper penalty.
The court has also ruled that where a penalty less punitive would suffice, whatever missteps may be committed by labor ought not to be visited with a consequence so severe. It is not only for the laws concern for the workingman; there is, in addition, his family to consider. Unemployment brings untold hardships and sorrows on those dependent on wage earners.

Conformably with the foregoing, the Court finds that the circumstances listed by the respondent merit the mitigation of the ultimate penalty of dismissal from the service x xx.

ATTY. BENIGNO T. BARTOLOME, *Complainant,* -versus- ATTY. CHRISTOPHER A. BASILIO, *Respondent.*

A.C. No. 10783, SPECIAL FIRST DIVISION, January 31, 2018, PERLAS-BERNABE, *J.*

A decision is immediately executory upon receipt thereof if the decision so indicates, as in this case. The Court did not accept Basilio's noncompliance with the suspension order, believing that his suspension was held in abeyance pending resolution of his motion for reconsideration of the Decision.

FACTS:

In the October 14, 2015 Decision (the Decision), the Court suspended Respondent Atty. Christopher Basilio (Basilio) from the practice of law for one (1) year, revoked his incumbent commission as a notary public, and prohibited him from being commissioned as a notary public for two (2) years, effective immediately, after finding him guilty of violating the 2004 Rules of Notarial Practice and Rule 1.01, Canon 1 of the Code of Professional Responsibility. Basilio, thru his counsel, Atty. Edward Robea (Robea), claimed to have received a copy of the Decision on December 2, 2015. In a Resolution dated April 20, 2016, the Court denied with finality Basilio's motion for reconsideration of the Decision.

Atty. Sotero T. Rambayon (Rambayon) inquired from the Court about the status of Basilio's suspension, alleging that the latter still appeared before Judge Venancio M. Ovejera of the Municipal Trial Court of Paniqui, Tarlac on April 26, 2016. In another letter, Rambayon informed the Court that in the schedule of cases before Judge Bernar D. Fajardo of the Regional Trial Court (RTC) of Paniqui, Tarlac, Branch 67, there were five (5) cases where the litigants were supposedly represented by Basilio. Thereafter, the Court, adopting the OBC's recommendation, required Basilio to show why he should not be held in contempt of court for not immediately complying with the Court's order of suspension upon receipt of the Decision. Complying with the show cause order, Basilio explained that he did not immediately comply with the suspension order because he believed that his suspension was held in abeyance pending resolution of his motion for reconsideration of the Decision, following the guidelines in *Maniago v. De Dios* (Maniago), wherein it was stated that "unless the Court explicitly states that the decision is immediately executory upon receipt thereof, respondent has fifteen (15) days within which to file a motion for reconsideration thereof. The denial of said motion shall render the decision final and executory." On this score, he maintained that what was immediately executory was only the revocation of his notarial commission and the two (2)-year prohibition of being commissioned as a notary public.

On July 25, 2017, Basilio filed a Motion to Lift Suspension (Motion) attaching an Affidavit of Cessation/Desistance from Practice of Law or Appearance in Court. However, the OBC maintained that Basilio, through his counsel, Robea, received the Decision on November 3, 2015. Hence, the one (1)-year suspension order from the practice of law imposed upon him commenced from the said date should end on November 3, 2016. On the other hand, the two (2)-year order of revocation of notarial commission and prohibition from being commissioned as a notary public should end on November 3, 2017. The OBC observed that Basilio served his suspension order from the practice of law beginning only on July 9, 2016 and desisted from his notarial practice on December 2, 2015, as shown by the attached Certifications; hence, the recommended fine.

ISSUE:

Whether Basilio's suspension should be lifted. (NO)

RULING:

The dispositive portion of the Decision explicitly states that the penalties imposed on Basilio were all "effective immediately." Accordingly, Basilio's compliance with the order of suspension, as well as all the other penalties, should have commenced on the day he received the Decision, which was on December 2, 2015, as per the Registry Return Receipt, and not on November 13 (not 3), 2015 when the same was merely mailed. This notwithstanding, Basilio himself admitted that he served his suspension only on July 9, 2016, proffering that he believed that what was immediately executor was only the revocation of his notarial commission and the two (2)-year prohibition against being commissioned as a notary public. Unfortunately, the Court cannot accept such flimsy excuse in light of the Decision's unequivocal wording. Irrefragably, the clause "effective immediately" was placed at the end of the enumerated series of penalties to indicate that the same pertained to and therefore, qualified all three (3) penalties, which clearly include his suspension from the practice of law. The immediate effectivity of the order of suspension — not just of the revocation and prohibition against his notarial practice — logically proceeds from the fact that all three (3) penalties were imposed on Basilio as a result of the Court's finding that he failed to comply with his

duties as a notary public, in violation of the provisions of the 2004 Rules of Notarial Practice, and his sworn duties as a lawyer, in violation of Rule 1.01, Canon 1 of the Code of Professional Responsibility. Thus, with the Decision's explicit wording that the same was "effective immediately," there is no gainsaying that Basilio's compliance therewith should have commenced immediately from his receipt of the Decision on December 2, 2015. On this score, Basilio cannot rely on the Maniago ruling as above-claimed since it was, in fact, held therein that a decision is immediately executory upon receipt thereof if the decision so indicates, as in this case.

WHEREFORE, the Court hereby FINDS respondent Atty. Christopher A. Basilio GUILTY of indirect contempt.

2. Grounds

ROMEO A. ZARCILLA and MARITA BUMANGLAG, *Complainants,* -versus- ATTY. JOSE C. QUESADA, JR., *Respondent.*
A.C. No. 7186, EN BANC, March 13, 2018, PER CURIAM.

*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**.*

*Furthermore, **willful disobedience of the lawful orders of this Court**, which under Section 27, Rule 138 of the Rules of Court is **in itself alone, a sufficient cause for suspension or disbarment**. Cavalier attitude in repeatedly ignoring the orders of the Supreme Court constitutes utter disrespect to the judicial institution.*

FACTS:

Consequently, Bumanglag was indicted for four counts of falsification of public documents. However, Zarcillalater on withdrew said cases when he learned that Bumanglag was not aware of the contents of her counter-affidavit when she signed the same. He also found out that Bumanglag was **deceived by her co accused, Atty. Quesada**.

The Court resolved to require Atty. Quesada to file a comment on the complaint against him. Atty. Quesada filed a Motion for Extension of Time to File Comment due to voluminous workload. However, due to Atty. Quesada's **failure to file a comment within the extended period**, the Court resolved to require Atty. Quesada to sho**w cause why he should not be disciplinarily dealt with or held in contempt** from such failure, and to comply with the Resolution by submitting the required comment. Due to Atty. Quesada's **failure to comply with the Show Cause Resolution**, the Court resolved to impose upon Atty. Quesada a fine. Nevertheless, **no payment of fine** was made despite repeated notices and warnings from the Court. Because of his **continuous failure to follow the directives of the Court**, his arrest was ordered and is to be detained until he shall have complied with the Court's Resolution. It was only after five (5) years when Atty. Quesada filed his Comment abd made payment for the fine imposed upon him.

The Court referred the instant case to the Integrated Bar of the Philippines (IBP) for investigation. Atty. Quesada's repeated failure to appear for the mandatory conference caused the case to be deemed submitted for resolution. IBP **recommended the disbarment of Atty. Quesada**.

ISSUE:

Whether the respondent is still fit to continue to be an officer of the court in the dispensation of justice. (NO)

RULING:

By his actuations, Atty. Quesada violated **not only the notarial law but also his oath as a lawyer** when he notarized the deed of sale without all the affiant's (Bumanglag) personal appearance. His 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. **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.

Aside from Atty. Quesada's violation of his duty as a notary public, what this Court find more deplorable was his defiant stance against the Court as demonstrated by his **repetitive disregard of the Court's directives** to file his comment on the complaint. It took a warrant of arrest to finally move Atty. Quesada to file his Comment and pay the fines imposed upon him. And even with the submission of his comment, he **did not offer any apology and/or any justification for his long delay** in complying with the directives/orders of this Court.

Atty. Quesada's acts constitute **willful disobedience of the lawful orders of this Court**, which under **Section 27, Rule 138 of the Rules of Court** is in itself alone is a **sufficient cause for suspension or disbarment**. His cavalier attitude in repeatedly ignoring the orders of the Supreme Court constitutes utter disrespect to the judicial institution. Atty. Quesada **displayed no remorse** as to his misconduct which, thus, proved himself **unworthy of membership in the Philippine Bar**. Clearly, Atty. Quesada is unfit to discharge the duties of an officer of the court and deserves the **ultimate penalty of disbarment.**

TOMAS N. OROLA and PHIL. NIPPON AOI INDUSTRY, INC., *Complainants,* -versus- ATTY. ARCHIE S. BARIBAR, *Respondent.*
A.C. No. 6927, SECOND DIVISION, March 14, 2018, PERALTA, *J*.

Notarization *is not an empty, meaningless, or routinary act. It is* ***impressed with substantial public interest****, and only those who are qualified or authorized may act as such. Notarization of documents* ***ensures the authenticity and reliability of a document****. Notarization of a private document* ***converts such document into a public one****, and renders it* ***admissible in court*** *without further proof of its authenticity. A notary public* ***should not notarize a documentunless 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.*

FACTS:

Complainants alleged that Baribar filed a baseless labor case on behalf of his twenty-four (24) clients against them. They further averred that **Baribar notarized the Motion for**

Reconsideration without the personal appearance of DocufredoClaveria (*Claveria*) since the records of the Bureau of Immigration show that he was overseas at that time.

In his Comment, Baribar denied all the allegations against him claiming that sometime in March 2004, he prepared an "Authority to Represent" document. He requested Claveria, Akol and Labrador to obtain the signatures of the others who live in different municipalities of Negros Occidental. He personally met 24 of the 27 signatories, asked them to produce their residence certificates and confirm their signature in the document. He confirmed the identities of the others who were unable to bring their residence certificates through their leaders. He overlooked the notarization of the document and was only able to notarize the same because of the renovation of their law offic. He averred that his mistake to strike through the names of four individuals in the Authority to Represent and verification of the labor complaint left the impression that the latter were parties to the appeal.

Akol and Labrador signed the verification of the motion for reconsideration in his presence. He then asked them to secure Claveria's signature. Thereafter, he received the verification on the last day of filing, and did not hesitate to notarize the same since he personally knew Claveria and was familiar with the latter's signature. He claimed that he acted in the best interest of his client and in good faith. The Court referred the case to the Integrated Bar of the Philippines (*IBP*) for investigation, report and recommendation or decision.

ISSUE:

Whether the respondent should be suspended from the practice of law. (YES)

RULING:

In this case, Baribar readily admits that Claveria was not present when he notarized the Motion for Reconsideration. He explained that he asked the other two affiants, Akol and Labrador, to obtain Claveria's signature. He notarized the signed verification he received as he personally knew Claveria and was familiar with his signature.

Notarization is not an empty, meaningless, or routinary act. It is **impressed with substantial public interest**, and only those who are qualified or authorized may act as such. Notarization of documents **ensures the authenticity and reliability of a document**. Notarization of a private document **converts such document into a public one**, and renders it **admissible in court** without further proof of its authenticity. A notary public **should not notarize a documentunless 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.

As a lawyer, Baribaris **expected at all times to uphold the integrity and dignity of the legal profession** and refrain from any act or omission which might lessen the trust and confidence reposed by the public in the integrity of the legal profession. We agree with the IBP Commissioner that Baribar did not intend to require Claveria's personal appearance before him. Clearly, Baribar**failed to exercise due diligence in upholding his duty as a notary public.**

Wherefore, the Court finds respondent Atty. Archie S. Baribar **guilty** of breach of the 2004 Rules on Notarial Practice and the Code of Professional Responsibility. Accordingly, the Court **suspends** him

from the practice of law for one (1) year; **revokes** his incumbent commission, if any; and **prohibits** him from being commissioned as a notary public for two (2) years, effective immediately. He is **warned** that a repetition of the same or similar acts in the future shall be dealt with more severely.

MICHELLE YAP, *Complainant,* -versus- ATTY. GRACE C. BURI, *Respondent.*
A.C. No. 11156, SECOND DIVISION, March 19, 2018, PERALTA, *J*.

The foregoing canons require of a lawyer to endure a high sense of responsibility and good fidelity in all their dealings and emphasize the high standard of honesty and fairness expected of them, not only in the practice of the legal profession, but ***in their personal dealings as well****. Thus,* ***lawyers may be disciplined for any conduct, whether in their professional or in their private capacity****, if such conduct renders them unfit to continue to be officers of the court.*

FACTS:

Complainant Michelle Yap was the vendor in a contract of sale of a condominium unit, while Atty. Grace C. Buri, Yap's close friend and her daughter's godmother, was the vendee. Buri made an offer to purchase the property but asked for the reduction of the price. After consulting with her husband, Yap agreed. Of the total amount of purchase price of P1,200,000.00, P200,000.00 remains unpaid; Buri insisted that she would just pay the balance on installment but without specifying the amount to be paid on each installment. Because she trusted the respondent, Yap gave Buri the full and immediate possession of the condominium unit despite the outstanding balance. However, when Yap finally asked for the balance, Buri said she would pay it on a monthly installment of P5,000.00 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. Yap then filed an administrative complaint against Buri for the alleged **false accusations** against her.When ordered to submit her answer, Buri failed to comply. She did not even appear during the mandatory conference.

ISSUE:

Whether the fact that what is involved is a personal dealing of a lawyer is material to the suspension from the practice of law. (NO)

RULING:

Buri's persistent **refusal to pay her obligation** despite frequent demands **clearly reflects her lack of integrity and moral soundness**; she **took advantage of her knowledge of the law** and clearly resorted to threats and intimidation in order to get away with what she wanted, constituting a **gross violation of professional ethics** and a **betrayal of public confidence in the legal profession**.

Buri indubitably swept aside the Lawyer's Oath that enjoins her to support the Constitution and obey the laws. She forgot that she **must not wittingly or willingly promote or sue any groundless, false or unlawful suit** nor give aid nor consent to the same. She also took for granted the express commands of the Code of Professional Responsibility (CPR), specifically Rule 1.01 of Canon 1 and Rule 7.03 of Canon 7 of the CPR.

The foregoing canons require of Buri, as a lawyer, an enduring high sense of responsibility and good fidelity in all her dealings and emphasize the high standard of honesty and fairness expected of her, not only in the practice of the legal profession, but **in her personal dealings as well**. Thus, **lawyers may be disciplined for any conduct, whether in their professional or in their private capacity**,if such conduct renders them unfit to continue to be officers of the court.

That Buri's act involved a private dealing with Yap is immaterial. Her being a lawyer calls for - whether she was acting as such or in a non professional capacity - the **obligation to exhibit good faith, fairness and candor in her relationship with others**. There is no question that a lawyer could **be disciplined not only for a malpractice in his profession, but also for any misconduct committed outside of his professional capacity**. Buri's being a lawyer demands that she conduct herself as a person of the highest moral and professional integrity and probity in her dealings with others.

DELFINA HERNANDEZ SANTIAGO, *Complainant*, -versus- ATTY. ZOSIMO SANTIAGO AND ATTY. NICOMEDES TOLENTINO, *Respondents*.
A.C. No. 3921, FIRST DIVISION, June 11, 2018, LEONARDO-DE CASTRO, *J.*

Section 27, Rule 138 of the Rules of Court provides for the grounds for the imposition of the penalty of disbarment, to wit:

> ***SEC. 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 appearing as an attorney for a party to a case without authority so to do. x xx*

In this case, complainant accused the respondents of deceit, gross misconduct and of violating their Attorney's Oath in issuing the Resolution dated December 19, 1988 that allegedly contained false statements, and which was arrived at without her being informed of the charges or given the opportunity to present evidence.

Before the Court may impose against respondents the severe disciplinary sanction of disbarment, complainant must be able to establish by substantial evidence the malicious and intentional character of the misconduct complained of that evince the moral delinquency of respondents. Substantial evidence is the amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion.

Except for complainant's allegations, however, she failed to present sufficient evidence to substantiate her complaint. The Court agrees with the findings of Commissioner Andres that complainant has not proffered any evidence that tended to show that respondents intentionally and deliberately made false statements in the Resolution dated December 19, 1988 in order to deceive and induce Mayor Asistio to

dismiss complainant from service. She neither offered any documentary evidence to buttress her arguments nor presented any witness to corroborate her claims.

FACTS:

An administrative case for disbarment was filed by complainant Judge Delfina Hernandez Santiago against respondents Atty. Zosimo Santiago and Atty. Nicomedes Tolentino, charging them with deceit, gross misconduct and violating their oaths as members of the Bar.

In 1988, complainant, who was then the City Personnel Officer of Caloocan City, applied for, and was granted, a sick leave of absence with commuted pay covering 240 days from January 25 to December 31, 1988. Sometime in February 1988, complainant received a Memorandum from then Mayor Macario A. Asistio, Jr., which cancelled all leaves of absence of city officials and employees. She also received a memorandum, detailing her to the Office of the Secretary to the Mayor. Complainant apparently paid no heed to said memoranda. She was later directed to return to work in a letter dated April 21, 1988 signed by respondent Tolentino.

Complainant replied with a handwritten note, asking for ten days within which to answer and/or act on the letter. She, however, did not return to work. At the end of her leave, she tendered her resignation.She subsequently received a memorandum dated May 18, 1989 from Mayor Asistio terminating her employment. Enclosed therewith was a **Resolution dated December 19, 1988** signed by respondents Santiago and Tolentino, which recommended her dismissal from service.

Complainant then filed the present case, accusing the respondents of making deceitful statements in said Resolution, committing gross misconduct and violating their Attorney's Oath for recommending her dismissal without just cause or due process. The following are the allegedly false statements:

> "**This office conducted an investigation and summoned Atty. Delfina H. Santiago for several times to appear before the undersigned; present her evidence and explain her side in consonance with the due process mandated by the constitution. Despite several notice sent to Delfina Santiago the latter did not heed the said notices**, thereby, leaving the undersigned without any alternative but to decide the case on the basis of the evidence available and the records pertaining to Atty. Delfina Santiago."
>
> **"What is nagging and aggravates the predicament of Atty. Delfina Santiago is that the instant case is already her second violation which places her in the category of incorrigible employees. The first is when she was charged of UNAUTHORIZED ABSENCES, punished for said act and made to suffer the corresponding penalty thereof**."
>
> "The actuations of the respondent Atty. Santiago squarely falls on the aforequoted grounds for dismissal as her failure to report for work amounts to [willful] disobedience to her superior officer. Nothing can be more important to the upholding and maintenance of the public service in its integrity and good name than the enforcement of the reasonable

> discipline of laws. In the discharge of an official duty and obligation Atty. Santiago as a government employee is expected to obey the order and instruction of the duly constituted authorities and she should not ignore or disregard a legitimate official order. Her act is inimical to the public service. To tolerate Santiago to get away with it would be tantamount to allowing her to act as she suits and satisfies her personal convenience in violation of her superior's order. An act which would be certainly demoralizing to the public service. **As may be gleaned from the foregoing discussions Atty. Santiago had [willfully] ignored her superior's order without any attempt to comply with it and therefore <u>insubordination</u> is clearly present aside from <u>neglect of duty</u>."**

Complainant contended that she was not administratively charged for any offense in 1983 or in 1988. Thus, she was not an incorrigible employee. Instead of being sent a notice or summons, she received respondent Tolentino's letter dated April 21, 1988, but the same neither stated that an administrative case had been filed against her nor did it require her to appear in any investigation. Since she was on a sick leave of absence, not a vacation leave, she could not be guilty of neglect of duty as she had no duties to perform. She was also not in a position to defy any lawful order, which would have amounted to insubordination.

In respondent Santiago's comment to the complaint, which is essentially similar with respondent Tolentino's comment, he argued that the allegedly deceitful statements in the above Resolution were not malicious imputations of falsehoods. If the statements were inaccurate, the same may have been caused by a misappreciation of facts or evidence. As to whether complainant was formally charged for unauthorized absences in 1983, the material point considered was that she was dismissed because of unauthorized absences. It also did not matter that she filed a sick leave of absence, not a vacation and sick leave, as the issue of the investigation was whether she was liable for disobeying Mayor Asistio's directives.

Respondent Santiago further alleged that Mayor Asistio indorsed to the City Legal Office the matter of complainant's noncompliance with the Mayor's return to work order and this referral was equivalent to an administrative complaint. Complainant was sent a notice regarding her failure to report for work, thereby informing her that she could be subjected to disciplinary action. Her failure to answer indicated her intent to disregard Mayor Asistio's order and her option not to participate in the investigation. Respondents' investigation proceeded ex parte and the assailed Resolution was issued on the basis of the evaluation of the evidence at hand. Without proof of bad faith or adverse personal motives, respondents cannot be held administratively liable for issuing the Resolution in the discharge of their official duties even if the same turned out to be erroneous.

Complainant insisted in her Consolidated Reply that the indorsement of Mayor Asistio was not at all signed by the Mayor and it was merely an indorsement of documents for study and recommendation. She was also not informed of said document. She asked for a period of ten days within which to answer and/or act on respondent Tolentino's letter dated April 21, 1988 and she did report to Atty. Enrique Cube, the Mayor's secretary to explain why she cannot go back to work yet. As no administrative case was filed against her in 1988, there could not have been a valid investigation under Presidential Decree No. 807. Yet, respondents made up fictitious statements of facts and conclusions of law in recommending her dismissal.

The Court referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation.

IBP Investigating Commissioner (IBP IC) recommended the dismissal of the complaint for lack of merit. IBP IC found that complainant failed to present convincing evidence that respondents acted in bad faith in rendering the Resolution dated December 19, 1988. Thus, they were held to be entitled to the legal presumption of innocence.

According to IBP IC, respondents concluded that complainant was previously charged for unauthorized absences by relying on existing records that showed that she was dropped from the rolls in 1983. Complainant's letter asking for a period of ten days to reply also meant that she understood that an investigation was underway. When she failed to respond, respondents assumed that she waived her right to present evidence. Respondents may have only been careless in their choice of words when they wrongly assumed that complainant was administratively charged in 1983 and they used the term summons in referring to the letter dated April 21, 1988. Still, respondents cannot be held liable for deceit without proof that they deliberately worded their Resolution to mislead Mayor Asistio into dismissing complainant.

Respondents were also not found guilty of misconduct as their actions neither indicated moral depravity, nor did it affect their qualifications as lawyers. Respondents may have erred in failing to follow the procedure under Section 38 of Presidential Decree No. 807 and they may be investigated for such lapses as government officials before some other venue. However, absent evidence showing respondents' moral depravity in issuing the said Resolution, they cannot be penalized therefor as members of the Bar.

Lastly, IBP IC ruled that respondents did not violate their oath as members of the Bar, particularly the oath to "do no falsehood, nor consent to the doing of any in court." The falsehood contemplated in the Attorney's Oath is one that is intentional or committed with malice. Although the allegedly deceitful statements in respondents' Resolution may not be wholly accurate, the same were found to be based on documents and made in the discharge of respondents' official functions as City Legal Officers.

IBP Board of Governors approved the recommendation.

ISSUE:

Whether the disbarment complaint shall prosper. (NO)

RULING:

The case was initiated upon the filing of the complaint for disbarment with this Court and the same was subsequently referred to the IBP for investigation, report, and recommendation in accordance with Section 1, Rule 139-B36 of the Rules of Court. The Resolution of the IBP Board of Governors embody their recommendation to this Court. As succinctly stated in *Cojuangco, Jr. v. Palma*:

> Clearly, the resolution of the IBP Board of Governors is merely recommendatory. The "power to recommend" includes the power to give "advice, exhortation or indorsement, which is essentially persuasive in

> character, not binding upon the party to whom it is made." Necessarily, the "final action" on the resolution of the IBP Board of Governors still lies with this Court. x xx

Verily, there is nothing in the IBP resolutions that would suggest that the same already constituted the final determination of the case and were beyond the power of the Court to review.

After thoroughly reviewing the record of this case, the Court affirms the recommendation of IBP IC and the IBP Board of Governors that the instant complaint should be dismissed.

Section 27, Rule 138 of the Rules of Court provides for the grounds for the imposition of the penalty of disbarment, to wit:

> **SEC. 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 appearing as an attorney for a party to a case without authority so to do. x xx

In this case, complainant accused the respondents of deceit, gross misconduct and of violating their Attorney's Oath in issuing the Resolution dated December 19, 1988 that allegedly contained false statements, and which was arrived at without her being informed of the charges or given the opportunity to present evidence.

As IBP IC correctly ruled, deceit covers intentional falsehoods or false statements and representations that are made with malice or with the intent to do wrong. Gross misconduct, on the other hand, is "any inexcusable, shameful or flagrant unlawful conduct on the part of a person concerned with the administration of justice; *i.e.*, conduct prejudicial to the rights of the parties or to the right determination of the cause. The motive behind this conduct is generally a premeditated, obstinate or intentional purpose." Similarly, on the charge of the alleged violation of the Attorney's Oath, the settled rule is that:

> The Code of Professional Responsibility does not cease to apply to a lawyer simply because he has joined the government service. In fact, by the express provision of Canon 6 thereof, the rules governing the conduct of lawyers '"shall apply to lawyers in government service in the discharge of their official tasks." **Thus, where a lawyer's misconduct as a government official is of such nature as to affect his qualification as a lawyer or to show moral delinquency, then he may be disciplined as a member of the bar on such grounds.** Although the general rule is that a lawyer who holds a government office may not be disciplined as a member of the bar for infractions he committed as a government official, he may, however, be disciplined as a lawyer if his misconduct constitutes a violation of his oath [as] a member of the legal profession.

Before the Court may impose against respondents the severe disciplinary sanction of disbarment, complainant must be able to establish by substantial evidence the malicious and intentional character of the misconduct complained of that evince the moral delinquency of respondents. Substantial evidence is the amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion.

Except for complainant's allegations, however, she failed to present sufficient evidence to substantiate her complaint. The Court agrees with the findings of Commissioner Andres that complainant has not proffered any evidence that tended to show that respondents intentionally and deliberately made false statements in the Resolution dated December 19, 1988 in order to deceive and induce Mayor Asistio to dismiss complainant from service. She neither offered any documentary evidence to buttress her arguments nor presented any witness to corroborate her claims.

Considering that complainant failed to discharge the burden of proof to warrant the imposition of administrative penalty against respondents Santiago and Tolentino, the complaint must be dismissed.

ATTY. MA. ROWENA AMELIA V. GUANZON, *Complainant,* -versus – ATTY. JOEL G. DOJILLO, *Respondent.*
A.C. No. 9850, SECOND DIVISION, August 06, 2018, PERALTA, *J.*

*As provided by section 1 of A.M. No. 03-06-13-SC: "**confidential information means information not yet made a matter of public record relating to pending cases, as well as information not yet made public concerning the work of any justice or judge relating to pending cases, including notes, drafts, research papers, internal discussions, internal memoranda, records of internal deliberations, and similar papers.***

The notes, drafts, research papers, internal discussions, internal memoranda, records of internal deliberations and similar papers that a justice or judge uses in preparing a decision, resolution or order shall remain confidential even after the decision, resolution or order is made public."

*Thus, in view of the above-quoted policies, even if Atty. Dojillo attached said subject documents to Garcia's Answer and Counter-Affidavit filed before the courts, **the same remains private** and confidential. In fact, even after the decision, resolution, or order is made public, such information that a justice or judge uses in preparing a decision, resolution, or order shall remain confidential.*

FACTS:

Complainant Atty. Guanzon was the counsel of Rosalie Jaype-Garcia *(Rosalie)* and her minor children when they filed a Petition for Temporary Protection Order under R.A. No. 9262, otherwise known as the *Anti-Violence against Women and their Children Act of 2004* against Jesus Chua Garcia *(Garcia),* Rosalie's husband.

Subsequently, before the Integrated Bar of the Philippines *(IBP),* Garcia then filed a **disbarment complaint against herein complainant** Atty. Guanzon for immorality, grave misconduct and

conduct unbecoming of a member of the Bar for allegedly having romantic and pecuniary interest on Rosalie and the financial support which was ordered by the court. Atty. Guanzon filed a case for Damages, a case for Unjust Vexation, and a case for Grave Oral Defamation against Garcia.

In Garcia's Answer and Counter-Affidavits in the aforesaid three (3) complaints, respondent Atty. Dojillo as counsel of Garcia, **attached the documents in the disbarment case**. Thus, the filing of disbarment complaint against Atty. Dojillo for violating the **Code of Professional Responsibility and Section 18, Rule 139 on the confidentiality of disbarment proceedings and documents**.

Atty. Dojillo further argued that Atty. Guanzon herself attached the very same subject documents in her Complaint for Contempt against him and his client Garcia. Atty. Dojillo asserted that if Atty. Guanzon's act of attaching the subject documents in the said contempt case is not a violation of the **confidentiality rule**, then he has not violated the same rule also when he attached the same subject documents in Garcia's defense. Finally, Atty. Dojillo maintained that there was neither malice nor willful violation of the Rules of Court on the confidentiality of disbarment proceedings and the Code of Professional Responsibility when he submitted the subject documents to the courts.

ISSUE:

Whether Atty. Dojillo violated the confidentiality of disbarment cases. (NO)

RULING

Atty. Dojillo cannot be faulted in attaching the disbarment records in his client's Answer and Counter-Affidavit in the three cases which Atty. Guanzon filed against his client as he found it necessary to establish factual basis on the motive of Atty. Guanzon in filing said cases against his client. In effect, Atty. Dojillo's act of attaching said subject documents to his client's Answer was to defend his client's cause which is his duty as counsel. In the absence of proof that Atty. Dojillo was motivated by malice or bad faith, or intent to harass or damage Atty. Guanzon's reputation, the instant disbarment complaint deserves no merit.

As provided by section 1 of A.M. No. 03-06-13-SC: "***confidential information means information not yet made a matter of public record relating to pending cases, as well as information not yet made public concerning the work of any justice or judge relating to pending cases, including notes, drafts, research papers, internal discussions, internal memoranda, records of internal deliberations, and similar papers.***

The notes, drafts, research papers, internal discussions, internal memoranda, records of internal deliberations and similar papers that a justice or judge uses in preparing a decision, resolution or order shall remain confidential even after the decision, resolution or order is made public."

Thus, in view of the above-quoted policies, even if Atty. Dojillo attached said subject documents to Garcia's Answer and Counter-Affidavit filed before the courts, **the same remains private** and confidential. In fact, even after the decision, resolution, or order is made public, such information that a justice or judge uses in preparing a decision, resolution, or order shall remain confidential.

DANDIBERTH CANILLO, *complainant*, *vs.* ATTY. SERGIO F. ANGELES, *respondent*.

A.C. No. 9899, EN BANC, EN BANC, PER CURIAM

FACTS:

For the Court's resolution are disbarment complaints filed against Atty. Sergio F. Angeles. In A.C. No. 9899, Dandiberth Canillo (Canillo) charged respondent with gross negligence for failing to comply with the Supreme Court's directive to file a reply which resulted in the dismissal of the petition for review in G.R. No. 153138. In A.C. No. 9900, Dr. Potenciano R. Malvar (Dr. Malvar) charged respondent of representing conflicting interests in various civil cases involving a common parcel of land. In A.C. Nos. 9901 and 9902, the complainants charged respondent for representing conflicting interests and entering into a champertous contract. In A.C. Nos. 9903-9905, Dr. Malvar charged respondent for committing fraudulent and deceitful acts, gross misconduct, malpractice, and violating the Code of Professional Responsibility for failing to account for various sums of money allegedly given to the respondent. Upon recommendation of the Office of the Bar Confidant, we consolidated these administrative cases.

ISSUE:

Whether or not respondent violated the Code of Professional Responsibility and should be disbarred (YES)

RULING:

Respondent's propensity in violating his duties as a lawyer merits the penalty of disbarment.

In A.C. No. 9899, the reason for the denial of the Canillo petition is clear from the face of our Resolution: "Angeles and Associates, counsel for petitioners, failed to file a reply to the comment on the petition for review on *certiorari* within the period. Respondent's negligence violated Rule 18.03 of the Code of Professional Responsibility which provides: A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable. As we have consistently held, a lawyer's failure to file a brief for his client, despite notice, amounts to inexcusable negligence.

In A.C. No. 9900, Respondent admitted handling at least 24 cases for Dr. Malvar. He also admitted handling two land cases for the Lopezes. He was instrumental in facilitating the various dealings between Dr. Malvar and the Lopezes involving the litigated properties he was handling, and in fact signed as a witness in the joint venture agreement and three deeds of conditional sale between the parties. These facts clearly establish that respondent represented conflicting interests in violation of Rule 15.03 of the Code of Professional Responsibility which provides that "[a] lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts."

In A.C. Nos. 9901 & 9902, respondent's agreement with Angelina, wherein respondent undertook to pay for and advance all costs and expenses, including taxes, necessary to secure the Torrens certificate of title for the land in exchange for two hectares of land, squarely falls within the definition of a champertuous contract. A champertous contract is defined as a contract between a stranger and a party to a lawsuit, whereby the stranger pursues the party's claim in consideration

of receiving part or any of the proceeds recovered under the judgment. The execution of this type of contract violates the fiduciary relationship between the lawyer and his client, for which the former must incur administrative sanction.

Lastly, in A.C. Nos. 9903-9905, the Court found respondent negligent for accounting for his client's money as required of him under Rule 16.01 of the Code of Professional Responsibility. Respondent's liability, however, is not limited to his failure to account for his client's money. He likewise contravened Rule 1.01 and Canon 17 of the Code of Professional Responsibility when he knowingly facilitated dubious transactions involving his client, Dr. Malvar.

AAA, *Complainant, v.* ATTY. ANTONIO N. DE LOS REYES, *Respondent*. A.C. No. 10021, EN BANC, September 18, 2018, PER CURIAM.

In Valdez v. Dabon, it was explained that the possession of good moral character is both a condition precedent and a continuing requirement to warrant admission to the bar and to retain membership in the legal profession.

Thus, lawyers are duty-bound to observe the highest degree of morality and integrity not only upon admission to the Bar but also throughout their career in order to safeguard the reputation of the legal profession. Any errant behavior, be it in their public or private life, may subject them to suspension or disbarment. Section 27, Rule 138 of the Rules of Court expressly states that members of the Bar may be disbarred or suspended for any deceit, grossly immoral conduct, or violation of their oath.

In Ventura v. Samson, SC explained that immoral conduct involves acts that are willful, flagrant, or shameless, and that show a moral indifference to the opinion of the upright and respectable members of the community. It is gross when it is so corrupt as to constitute a criminal act, or so unprincipled as to be reprehensible to a high degree, or when committed under such scandalous or revolting circumstances as to shock the community's sense of decency.

Here, the records of this administrative case sufficiently substantiate the findings of the CBD-IBP Investigating Commissioner, as well as the IBP Board of Governors, that indeed respondent Atty. De Los Reyes committed acts of gross immorality in the conduct of his personal affairs with AAA that show his disregard of the lawyer's oath and of the Code of Professional Responsibility.

Respondent Atty. De Los Reyes is guilty of "sextortion" which is the abuse of his position or authority to obtain sexual favors from his subordinate, the complainant, his unwilling victim who was not in a position to resist respondent's demands for fear of losing her means of livelihood. The sexual exploitation of his subordinate done over a period of time amounts to gross misbehavior on the part of respondent Atty. De Los Reyes that affects his standing and character as a member of the Bar and as an officer of the Court. All these deplorable acts of respondent Atty. De Los Reyes puts the legal profession in disrepute and places the integrity of the administration of justice in peril, thus warranting disciplinary action from the Court.

FACTS:

Sometime in February 1997, AAA was hired as secretary to respondent Atty. Antonio De Los Reyes (Atty. De Los Reyes). AAA became a permanent employee with a plantilla position of private

secretary 1, pay grade 11, on a co-terminus status with respondent Atty. De Los Reyes. She later learned that it was respondent Atty. De Los Reyes who facilitated her rapid promotion to her position soon after becoming his secretary.

Sometime in the last quarter of 1997, respondent Atty. De Los Reyes offered to take AAA home in his service vehicle telling her that her residence on J.P. Rizal Street, Makati was along his route. From then on it became a daily routine between them, which continued even after AAA moved to Mandaluyong City.

Sometime in the last quarter of 1998, AAA began to feel very uncomfortable with the situation when she realized that respondent Atty. De Los Reyes was becoming overly possessive and demanding to the extent that she could not refuse his offer to bring her home; her telephone calls were being monitored by him who constantly asked her who she was talking with on the telephone and would get mad if she told him that it was a male person; she would be called to his office during office hours just to listen to his stories about his life and sometimes just to sit there doing nothing in particular, simply because he wanted to see her. He also sent or left her love notes.

On 11 December 1998, when she refused his offer to take her home, he got angry with her and shouted "*putangina mo*." She tried to get away from him but he blocked her path, grabbed her arm and dragged her to the parking area and pushed her inside his service vehicle. He drove off, ignoring her cries and pleas to stop and let her get off. He slapped her twice and she became hysterical. She opened the car door and attempted to jump but he was able to grab her jacket and dropped her off somewhere in Makati. She reported the incident to the police. AAA did not file a formal report or complaint against respondent as she thought that it would be futile. She told Atty. Fermin Arzaga [then Senior Vice-President for Finance] what happened and showed him her bruises on her wrists. She told him of her plan to resign and he asked her not to resign and instead to request for a transfer. Despite his advice, she sent a resignation letter that was received by the Personnel Department on 22 December 1998. On the same date, both the manager and the assistant manager talked to AAA and persuaded her to reconsider her resignation by promising her that she would be re-assigned to the Office of the President, as stated in an Office Order dated 21 January 1999.

On 22 January 1999, AAA reported to the Office of the President. But even before she could start working in her new assignment, she was told to return to her former post as private secretary of respondent Atty. De Los Reyes. AAA later learned from respondent Atty. De Los Reyes that he had called up Atty. Arzaga and told him not to interfere *("huwag kang makialam").* He told her that her position was co-terminus with his, being his private secretary.

Much as she wanted to pursue her plan to resign, AAA's financial position at that time left her with no choice but to continue working as respondent Atty. De Los Reyes' secretary. He eventually made it clear to her that he was determined to make her his mistress and overpowered her resistance by leaving her no choice but to succumb to his advances or lose her job. From then on, she became his sex slave who was at his beck and call at all times for all kinds of sexual services. She could not even refuse him without risking physical, verbal and emotional abuse.

Coming to the office was such an ordeal that she often suffered from all sorts of illnesses which gave her a convenient reason to absent herself, but did not deter Atty. De Los Reyes from calling and texting her or even coming to her house to personally check on her. Atty. De Los Reyes kept sending

AAA text messages that she ignored and even requested for a change of number of her cell phone. After a month of not receiving anything from him, she thought he had already given up on her but she was wrong. He now trained his sight on [Ma. Victoria] Marivic Alpajaro, a good friend and officemate of AAA, who had now become the object of his ire and jealousy because of her apparent closeness to AAA.

AAA filed another Complaint-Affidavit dated November 19, 2004, with the Commission on Bar Discipline (CBD) of the Integrated Bar of the Philippines (IBP), alleging that respondent Atty. De Los Reyes still continued to harass her and her colleagues (Ma. Victoria Alpajaro and Mercedita Lorenzana) who agreed to be her witnesses in her earlier complaint. According to AAA, respondent Atty. De Los Reyes filed baseless charges against her and her sympathetic officemates before the Office of the Ombudsman, and sought their preventive suspension without affording them due process through an initial administrative investigation at the National Home Mortgage Finance Corporation (NHMFC).

In his defense, respondent Atty. De Los Reyes denied AAA's allegations relating to the alleged sexual harassment and gross immorality for lack of factual and legal bases. In his Consolidated Position Paper for the Respondent dated May 16, 2005, respondent Atty. De Los Reyes contended that AAA's complaint-affidavits were not sufficient in form and substance as required under the Rules of Court and should be dismissed for being mere scraps of paper. According to respondent Atty. De Los Reyes, the complaints failed to state the ultimate facts or particulars, approximate dates, and other details of the sexual acts or advances that he allegedly committed, in violation of his right to be informed of the nature and cause of the accusations against him. He averred that AAA's lame excuse for her omission allegedly due to her fear that she would be exposing herself to shame and humiliation after her colleagues would know of the details of her complaint is unbelievable.

Finally, respondent Atty. De Los Reyes asserted that assuming the alleged grounds for disbarment regarding the claim for sexual harassment were true, the same had already prescribed since they occurred in 1999 or more than three years prior to the institution of the complaints.

In the Report and Recommendation dated June 6, 2011, the CBD-IBP Commissioner found respondent Atty. De Los Reyes guilty of violating Rule 1.01 of the Code of Professional Responsibility and recommended the penalty of one (1) year suspension. The Investigating Commissioner opined that there was no indication that AAA was not telling the truth, and that she acceded to the numerous incidents of sexual intercourse because of fear of reprisals or consequences if she refused. IBP Board of Governors adopted and approved with modification, that respondent be suspended indefinitely, the Report and Recommendation of the Investigating Commissioner

ISSUE:

Whether or not respondent Atty. De Los Reyes committed acts amounting to sexual harassment and gross immoral conduct in violation of the Code of Professional Responsibility which would warrant his disbarment. (YES)

RULING:

The pertinent provisions of the Code of Professional Responsibility read:

> 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 integrated bar.
> x x x x
> 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 *Valdez v. Dabon*, it was explained that the possession of good moral character is both a condition precedent and a continuing requirement to warrant admission to the bar and to retain membership in the legal profession, to wit:

> Lawyers have been repeatedly reminded by the Court that possession of good moral character is both a condition precedent and a continuing requirement to warrant admission to the Bar and to retain membership in the legal profession. This proceeds from the lawyer's bounden duty to observe the highest degree of morality in order to safeguard the Bar's integrity, and the legal profession exacts from its members nothing less. Lawyers are called upon to safeguard the integrity of the Bar, free from misdeeds and acts constitutive of malpractice. Their exalted positions as officers of the court demand no less than the highest degree of morality.

Thus, lawyers are duty-bound to observe the highest degree of morality and integrity not only upon admission to the Bar but also throughout their career in order to safeguard the reputation of the legal profession. Any errant behavior, be it in their public or private life, may subject them to suspension or disbarment. Section 27, Rule 138 of the Rules of Court expressly states that members of the Bar may be disbarred or suspended for any deceit, grossly immoral conduct, or violation of their oath.

In *Ventura v. Samson*, SC explained that immoral conduct involves acts that are willful, flagrant, or shameless, and that show a moral indifference to the opinion of the upright and respectable members of the community. It is gross when it is so corrupt as to constitute a criminal act, or so unprincipled as to be reprehensible to a high degree, or when committed under such scandalous or revolting circumstances as to shock the community's sense of decency.

Here, the records of this administrative case sufficiently substantiate the findings of the CBD-IBP Investigating Commissioner, as well as the IBP Board of Governors, that indeed respondent Atty. De Los Reyes committed acts of gross immorality in the conduct of his personal affairs with AAA that show his disregard of the lawyer's oath and of the Code of Professional Responsibility.

Respondent Atty. De Los Reyes is guilty of "sextortion" which is the abuse of his position or authority to obtain sexual favors from his subordinate, the complainant, his unwilling victim who was not in a position to resist respondent's demands for fear of losing her means of livelihood. The sexual exploitation of his subordinate done over a period of time amounts to gross misbehavior on the part of respondent Atty. De Los Reyes that affects his standing and character as a member of the

Bar and as an officer of the Court. All these deplorable acts of respondent Atty. De Los Reyes puts the legal profession in disrepute and places the integrity of the administration of justice in peril, thus warranting disciplinary action from the Court.

SC adopts the findings and conclusions of the Investigating Commissioner, as sustained by the IBP Board of Governors. SC finds Atty. Antonio N. De Los Reyes guilty of gross immoral conduct and violation of Rule 1.01, Canon 1, and Rule 7.03, Canon 7 of the Code of Professional Responsibility, and is hereby disbarred from the practice of law.

3. Proceedings (Rule 139-B, Rules of Court, as amended)
4. Recoverable amounts; intrinsically linked to professional engagement

D. Readmission to the Bar
1. Lawyers who have been suspended

TOMAS P. TAN, JR., *Complainant*, -versus- 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:

Whether 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.

2. Lawyers who have been disbarred

SAN JOSE HOMEOWNERS ASSOCIATION, INC. as represented by REBECCA V. LABRADOR, *Complainant,* -versus – ATTY. ROBERTO B. ROMANILLOS, *Respondent.*
A.C. No. 5580, EN BANC, July 31, 2018, PER CURIAM.

*The Court laid down the following guidelines in resolving requests for **judicial clemency**, to wit:*

1. *There must be **proof of remorse and reformation.***
2. ***Sufficient time must have lapsed** from the imposition of the penalty to ensure a period of reform.*
3. *The **age of the person** asking for clemency must show that he still has **productive years ahead of him.***
4. *There must be a **showing of promise**, as well as **potential for public service.***
5. *There must be **other relevant factors and circumstances** that may justify clemency.*

The Court, in several reinstatement to the bar cases, considered the ***conduct of the disbarred attorney before and after his disbarment,*** *the* ***time that had elapsed*** *from the disbarment and the application for reinstatement, and more importantly, the* ***disbarred attorneys' sincere realization and acknowledgment of guilt.*** *In this case, while more than ten (10) years had already passed since his disbarment on June 15, 2005, respondent's present appeal has failed to show substantial proof of his reformation as required in the first guideline above.*

FACTS:

Respondent represented San Jose Homeowners Association, Inc. (SJHAI) before the Human Settlements Regulation Commission (HSRC) in a case against Durano and Corp., Inc. (DCI). SJHAI alleged that Lot No. 224 was designated as a school site in the subdivision plan that DCI submitted to the Bureau of Lands in 1961 but was sold by DCI to spouses Ramon and Beatriz Durano without disclosing it as a school site. While still the counsel for SJHAI, respondent represented Myrna and Antonio Montealegre in requesting for SJHAI's conformity to construct a school building on Lot No. 224 to be purchased from Durano. Respondent also acted as counsel for Lydia Durano-Rodriguez who substituted for DCI in another case. Thus, SJHAI filed a **disbarment case against respondent for representing conflicting interests.**

The Investigating Commissioner recommended the dismissal of the complaint with the admonition that respondent should observe extra care and diligence in the practice of his profession to uphold the dignity and integrity beyond reproach. **Notwithstanding the admonition**, respondent **continued representing** Lydia Durano-Rodriguez. Thus, a **second disbarment case** was filed against respondent. Wherefore, respondent Atty. Roberto B. Romanillos **was disbarred** and his name was **ordered stricken from the Roll of Attorneys**.

Almost nine (9) years from his disbarment, respondent filed the instant Letter once more **praying for the Court to reinstate him in the Roll of Attorneys.**

ISSUE:

Whether respondent should be reinstated in the Roll of Attorneys. (NO)

RULING

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.

The basic inquiry in a petition for reinstatement to the practice of law is **whether the lawyer has sufficiently rehabilitated himself or herself in conduct and character.** The Court will take into consideration his or her character and standing prior to the disbarment, the nature and character of the charge/s for which he or she was disbarred, his or her conduct subsequent to the disbarment, and the time that has elapsed in between the disbarment and the application for reinstatement.

The Court laid down the following guidelines in resolving requests for **judicial clemency**, to wit:

1. There must be **proof of remorse and reformation.**
2. **Sufficient time must have lapsed** from the imposition of the penalty to ensure a period of reform.
3. The **age of the person** asking for clemency must show that he still has **productive years ahead of him.**
4. There must be a **showing of promise**, as well as **potential for public service.**
5. There must be **other relevant factors and circumstances** that may justify clemency.

The Court, in several reinstatement to the bar cases, considered the **conduct of the disbarred attorney before and after his disbarment,** the **time that had elapsed** from the disbarment and the application for reinstatement, and more importantly, the **disbarred attorneys' sincere realization and acknowledgment of guilt.** In this case, while more than ten (10) years had already passed since his disbarment on June 15, 2005, respondent's present appeal has failed to show substantial proof of his reformation as required in the first guideline above.

The Court is not persuaded by respondent's sincerity in acknowledging his guilt. While he expressly asks for forgiveness for his transgressions in his letters to the Court, respondent continues to insist on his honest belief that there was no conflict of interest notwithstanding the Court's finding to the contrary. Furthermore, the testimonials submitted by respondent all claim that respondent is a person of **good moral character** without explaining why or submitting proof in support thereof.

Still, aside from bare statements, no other proof was presented to specify the actual engagements or activities by which respondent had served the members of his community or church, provided free legal assistance to the poor and supported social and civic activities to provide free medical services to the less fortunate, hence, insufficient to demonstrate any form of consistency in his supposed desire to reform. To add, **no other evidence was presented in his appeal to demonstrate his potential for public service, or that he - now being 71 years of age - still has productive years ahead of him that can be put to good use by giving him a chance to redeem himself**. Thus, the third and fourth guidelines were neither complied with.

E. Mandatory Continuing Legal Education (Bar Matter No. 850, as amended)
- **1. Requirements**
- **2. Compliance**
- **3. Exemptions**
- **4. Sanctions**

F. Notarial Practice (A.M. No. 02-8-13-SC, as amended)
- **1. Qualifications of a notary public**
- **2. Term of office of a notary public**
- **3. Powers and limitations**

ROMEO ALMARIO, *Complainant,* -versus- ATTY. DOMINICA LLERA-AGNO, *Respondent.*
A.C. No. 10689, FIRST DIVISION, January 8, 2018, DEL CASTILLO, *J.*

A document should not be notarized unless the person/s who is/are executing it is/are personally or physically present before the notary public. The personal and physical presence of the parties to the

deed is necessary to enable the notary public to verify the genuineness of the signature/s of the affiant/s therein and the due execution of the document.

Mallari could not have personally appeared before respondent lawyer in Muntinlupa City, Philippines where the SPA was notarized on July 26, 2006 because Mallari was in Japan at that time, as certified to by the Bureau of Immigration.

FACTS:

On July 5, 2006, a Complaint for Judicial Partition with Delivery of Certificate of Title, docketed as Civil Case No. 06115416 (civil case), was instituted before the Regional Trial Court of Manila by Romeo Almario (Almario), herein complainant, against therein defendants Angelita A. Barrameda, Francisca A. Mallari (Mallari) and several other persons. Relative to the civil case, Atty. Dominica Llera-Agno (Atty. Llera-Agno), herein respondent, notarized and acknowledged a SPA.

It is complainant's contention: (1) that the said SPA was falsified because Mallari could not possibly have executed the same because she was in Japan at the time SPA was executed; (2) that respondent lawyer notarized the SPA although Mallari did not personally appear before her; and (3) that, Atty. Llera-Agno violated Canons 1 and 10 of the Code of Professional Responsibility

Investigating Commissioner found respondent lawyer liable for violation of Section 12 of the 2004 Rules on Notarial Practice and recommended that she be suspended for six months as notary public. It was evident that Atty. Llera-Agno notarized the SPA despite knowing that Mallari did not personally appear before her. The IBP Board of Governors adopted the findings and approved the recommendation of the Investigating Commissioner.

Atty. Llera-Agno admitted the infraction imputed against her, and simply pleads that the penalty recommended by the IBP be reduced or lowered. She argues that: (1) this is her first offense since she was first commissioned as a notary public in 1973; (2) the case involved only one document; (3) the notarization was done in good faith; (4) the civil case wherein the questioned SPA was used ended in a Compromise Agreement; and finally (5) she is already 71 years old and is truly sorry for what she had done, and promises to be more circumspect in the performance of her duties as a notary public.

ISSUE:

Whether Atty. Llera-Agno violated the 2004 Rules on Notarial Practice. (YES)

RULING:

The importance of the affiant's personal appearance when a document is notarized is underscored by Section 1, Rule II of the 2004 Rules on Notarial Practice which states:

> 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 presents an integrally complete instrument or 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**
>
> xxx
>
> Furthermore, Section 2 (b), Rule IV of the same Rules provides that:
>
> (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.

These provisions mandate the notary public to require the physical or personal presence of the person/s who executed a document, before notarizing the same. In other words, **a document should not be notarized unless the person/s who is/are executing it is/are personally or physically present before the notary public**. The personal and physical presence of the parties to the deed is necessary **to enable the notary public to verify the genuineness of the signature/s of the affiant/s** therein and the due execution of the document.

In *Ferguson v. Atty. Ramos*, held that "notarization is not an empty, meaningless and routinary act; it is imbued with public interest x xx." It likewise held that a notary public must not notarize a document unless the persons who signed it are the very same persons who executed the same, and personally appeared before him to attest to the truth of the contents thereof.

In the present case, the SPA in question was notarized by respondent lawyer despite the absence of Mallari, one of the affiants therein. Mallari could not have personally appeared before respondent lawyer in Muntinlupa City, Philippines where the SPA was notarized on July 26, 2006 because Mallari was in Japan at that time, as certified to by the Bureau of Immigration.

ROBERTO P. MABINI, *Complainant,* -versus - ATTY. VITTO A. KINTANAR, *Respondent.*
A.C. No. 9512, FIRST DIVISION, February 5, 2018, DEL CASTILLO, *J.*

A lawyer cannot be held liable for a violation of his duties as Notary Public when the law in effect at the time of his complained act does not provide any prohibition to the same, as in the case at bench.

In this case, complainant alleged that respondent was guilty of misconduct because he notarized the affidavit of his wife on April 25, 2002 prior to the effectivity of A.M. No. 02-8-13-SC on July 6, 2004. Nevertheless, at the time of such notarization, it was the 1917 Revised Administrative Code that covered notarial practice, which did not contain the prohibition against notarizing documents where the parties are related to the notary public within the 4th civil degree, by affinity or consanguinity.

FACTS:

In his Position Paper, complainant stated, that sometime in November 2003, Regina Alamares (Regina) approached him and his wife, Mercedes M. Mabini (Mercedes), to sell her realty located in Daraga, Albay. Regina made known to complainant and Mercedes that its title was lost but its duplicate certificate may be secured from the Register of Deeds (RD). Complainant and Mercedes nonetheless bought the property. Later, complainant filed a petition for issuance of second owner's duplicate copy, which the Regional Trial Court (RTC) granted. On March 2, 2005, the RD of Albay issued Transfer Certificate of Title No. T-133716 covering the property in the names of complainant and Mercedes over the property. Complainant further averred that, in March 2012, however, respondent's wife, Evangeline, filed a complaint against him, among other persons, for reconveyance, annulment of title, damages with prayer for preliminary injunction or restraining order before the RTC of Legaspi City. Attached to said complaint was an Affidavit of Lost Owner's Duplicate Copy of Title executed by Evangeline and notarized by respondent on April 25, 2002, and registered in his notarial book under Doc. No. 172, Page No. 35, Book No. 33, Series of 2002. According to complainant, respondent knew that he (respondent) was not authorized to notarize a document of his wife, or any of his relative within the fourth civil degree, whether by affinity or consanguinity; thus, for having done so, respondent committed misconduct as a lawyer/Notary Public.

For his part, respondent countered that the subject Affidavit purportedly executed by his wife appeared to have been notarized on April 25, 2002; as such, it was governed by Revised Administrative Code of 1917, which did not prohibit a Notary Public from notarizing a document executed by one's spouse.

The IBP Investigating Commissioner found respondent guilty of misconduct and recommended his suspension from the practice of law for six months, opining that since the law treats spouses as one upon their marriage, it follows that the notarization of the spouse's act is disallowed considering that a person cannot notarize his or her own act. On the other hand, the IBP-BOG resolved to modify the recommendation of the Investigating Commissioner in that respondent was imposed a stiffer penalty of six months' suspension from the practice of law; immediate revocation of his commission as Notary Public; and, a two-year disqualification as Notary Public.

ISSUE:

Whether respondent committed misconduct by notarizing his wife's affidavit of loss in 2002. (NO)

RULING:

It is a truism that the duties performed by a Notary Public are not just plain ministerial acts. They are so impressed with public interest and dictated by public policy. Such is the case since notarization makes a private document into a public one; and as a public document, it enjoys full credit on its face. However, a lawyer cannot be held liable for a violation of his duties as Notary Public when the law in effect at the time of his complained act does not provide any prohibition to the same, as in the case at bench.

In *Kapunan, et al. v. Casilan and Court of Appeals*, respondent Atty. Examen was charged with violating the Notarial Law when he notarized in 1984 the absolute deed of sale executed by his

brother and the latter's wife. The Court held that Atty. Examen was competent to notarize said document because the Revised Administrative Code did not prohibit a Notary Public from notarizing any document of a relative. Too, in *Ylaya v. Atty. Gacott*, the Court made an express pronouncement that the subject documents therein notarized in 2000 and 2001 were not covered by the 2004 Rules on Notarial Practice.

To recall, complainant alleged that respondent was guilty of misconduct because he notarized the affidavit of his wife on April 25, 2002. Nevertheless, at the time of such notarization, it was the 1917 Revised Administrative Code that covered notarial practice. As elucidated in Alilano and Ylaya, during the effectivity of said Code, a Notary Public was not disallowed from notarizing a document executed by a relative. Neither was there a prohibition for a Notary Public to notarize a document executed by his or her spouse.

WHEREFORE, the Complaint against Atty. Vitto A. Kintanar is DISMISSED for lack of merit.

NICANOR D. TRIOL, *Complainant,* -versus- ATTY. DELFIN R. AGCAOILI, JR., *Respondent.*
A.C. No. 12011, EN BANC, June 25, 2018, PERLAS-BERNABE, *J.*

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.*

In this case, records show that respondent indeed violated the 2004 Notarial Rules when he notarized the subject deed without complainant and Grace personally appearing before him, much more without the requisite notarial commission in 2011. Significantly, it was established that both complainant and Grace could not have personally appeared before respondent, since Grace was already residing at the U.S. at the time of the supposed notarization.

FACTS:

Complainant Nicanor Triol alleged that he and his sister, Grace D. Triol (Grace), are co-owners of a parcel of land in Quezon City. Sometime in January 2011, complainant decided to sell the subject land to a certain Leonardo P. Caparas (Caparas) but was unable to do so, as he could not obtain the signature of Grace who was already residing in the United States (U.S.) at that time. Subsequently, complainant discovered that a Deed of Absolute Sale dated March 11, 2011 (subject deed) was executed and notarized by respondent 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 respondent.

Respondent Atty. Agcaoili Jr. 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.

IBP Investigating Commissioner recommended the dismissal of the complaint. IBP Board of Governors reversed and recommended the penalty of suspension for a period of two years.

ISSUE:

Whether Atty. Agcaoili Jr. should be held administratively liable. (YES)

RULING:

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.In other words, a notary public is not allowed to 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.

Parenthetically, 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.

In this case, records show that respondent indeed violated the 2004 Notarial Rules when he notarized the subject deed without complainant and Grace personally appearing before him, much more without the requisite notarial commission in 2011. Significantly, it was established that both complainant and Grace could not have personally appeared before respondent, since Grace was already residing at the U.S. at the time of the supposed notarization. Furthermore, complainant presented a Certification dated April 7, 2015 issued by the Clerk of Court of the RTC showing that respondent was also not a commissioned notary public for and within Quezon City in 2012. On the other hand, respondent, apart from his bare denials and unsubstantiated defense of forgery, failed to rebut complainant's allegations and evidence.

In the same breath, respondent 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.

PABLITO L. MIRANDA, JR., *complainant* -versus- ATTY. JOSE B. ALVAREZ, *respondent*

A.C. No. 12196, SECOND DIVISON, September 3, 2018, PERLAS-BERNABE, *J.*

Notarization is the act of converting a private document into a public document, thus making it admissible in evidence without proving its authenticity. However, since it is invested with substantive public interest, only those who are qualified or authorized may act as notaries public. Failure to observe and comply with the requirements and duties prescribed in the 2004 Rules on Notarial Practice constitute as grounds for revocation of the notarial commission, and imposition of administrative sanctions.

FACTS:

On 16 January 2012, complainant filed a Complaint-Affidavit before the IBP-Commission on Bar Discipline averring that respondent notarized certain documents during the year 2010 when his notarial commission for and within San Pedro, Laguna had already expired way back in December 31, 2005. Complainant added that respondent failed to comply his duties under the Notarial Rules: (a) to register 1 notarial office only; (b) to keep only 1 active notarial register at any given time; (c) to file monthly notarial books, reports, and copies of the documents notarized in any given month; and (d) to surrender his notarial register and seal upon expiration of his commission. Lastly, complainant listed 3 addresses where respondent allegedly maintained his notarial offices.

Respondent argued that he was a duly commissioned notary public in 2010 in Biñan, Laguna.

IBP-IC found that respondent had 3 notarial offices; that he indeed notarized documents outside his notarial jurisdiction, and notarized a business permit bearing a fictitious address and lacking details of the signatory. IBP-IC found that respondent violated his oath of office and his duty as a lawyer, and committed unethical behavior as a notary public. Hence, he must be held administratively liable and recommended a two-year suspension.

IBP Board of Governors adopted and approved the recommendation of the IBP-IC but reduced the suspension from two years to one year.

ISSUE:

Whether or not the respondent is administratively liable. (YES)

RULING:

The Court found that:

(1) Respondent performed notarial acts without proper commission therefor. He performed notarial acts beyond the territorial jurisdiction of the said commissioning court, since he notarized a document when the said commission had already expired.

> Under the Notarial Rules, only persons who are commissioned as notarial public may perform notarial acts within the territorial jurisdiction of the court, which granted the commission.

(2) Respondent failed in his duty to ascertain the signatory's identity but also improperly notarized an incomplete notarial certificate.

> Under the Notarial Rules, "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."

(3) Respondent failed to forward to the Clerk of Court of the commissioning court a certified copy of each month's entries and a duplicate original copy of any instrument acknowledged before them.

> Under the Notarial Rules, a notary public must forward to the Clerk of Court, within the first ten (10) days of the month following, a certified copy of each month's entries and a duplicate original copy of any instrument acknowledged before the notary public. According to case law, failure to comply with this requirement is "a ground for revocation of a notary public's commission.

Respondent is also liable for violating the Code of Professional Conduct:

(1) Rule 1.01, Canon1, stating: "A lawyer shall not engage in unlawful, dishonest, immoral, or deceitful conduct"

(2) Canon 7, providing: "A lawyer shall at all times uphold the integrity and dignity of the legal profession and support the activities of the integrated bar."

Thus, respondent is suspended from practice law for a period of 2 years.

4. Notarial Register
5. Jurisdiction of notary public and place of notarization
6. Competent evidence of identity

IN RE: DECISION DATED SEPTEMBER 26, 2012 IN OMB-M-A-10-023-A, ETC. AGAINST ATTY. ROBELITOB. DIUYAN
A.C. No. 9676, FIRST DIVISION, APRIL 2, 2018, DEL CASTILLO, *J.*

It is a truism that the duties performed by a Notary Public are not just plain ministerial acts. They are so impressed with public interest and dictated by public policy. Such is the case since notarization makes a private document into a public one; and as a public document, it enjoys full credit on its face. However, a lawyer cannot be held liable for a violation of his duties as Notary Public when the law ***in effect at the time of his complained act does not provide any prohibition to the same, as in the case at bench.***

In the instant case, respondent notarized the Deed of Partition on July 23, 2003, or prior to the effectivity of the 2004 Rules on Notarial Practice, of which he is being held accountable by the IBP.

However, when the Deed was notarized on July 23, 2003, the applicable law was the notarial law under, Chapter 11, Article VII of the Revised Administrative Code, Section 251 of which states: "SECTION 251. Requirement as to notation of payment of (cedula) residence tax. – Every contract, deed, or other document acknowledged before a notary public shall haw certified thereon that the parties thereto have presented their proper (cedula) residence certificates or are exempt from the (cedula) residence tax, and there shall be entered by the notary public as a part of such certification the number, place of issue, and date of each (cedula) residence certificate as aforesaid."

FACTS:

The Office of the Ombudsman (Mindanao) furnished the Court a copy of its September 26, 2012 Decisionin Case No. OMB-M-A-10-023-A (Andrea M. Camilo v. Raul C. Brion, Agrarian Reform Program Technologist (SG-10), Municipal Agrarian Reform Office, Mati, Davao Oriental). In the said Decision, the Office of the Ombudsman noted, *viz.:*

> On a final note, this Office finds it unsettling that the Deed of Partition submitted before the DAR was notarized by Atty. Robellito B. Diuyan on 23 July 2003, when one of the signatories therein, Alejandro F. Camilo, had earlier died on 23 August 2001. On this matter, let a copy of this Decision be furnished the Supreme Court of the Philippines for its information and appropriate action.

In a letterdated October 30, 2013, and by way of comment, respondent admitted notarizing the Deed of Partition in his capacity as District Public Attorney of the Public Attorney's Office in Mati City and all of Davao Oriental. He claimed that:

> In the case at bar, eight (8) persons appeared before me with the document deed of partition prepared by them subject matter of the complaint. I asked them one by one if the document is true and correct [and] with their Community Tax Certificates, they answered me in the affirmative and after being satisfied with their answer I notarized the document for free as they are considered as indigents. Of course, they signed it one by one in front of me.

In a Report and Recommendationdated September 24, 2014, the IBP-Commission on Bar Discipline (CBD) found respondent guilty of violating the 2004 Rules on Notarial Practice. While it found no deceit or malice on the part of the respondent, and even considered the fact that respondent was a former public official with no previous record of misconduct, as well as the fact that the affiants in the subject Deed of Partition were farmers who did not have any IDs and only had Community Tax Certificates (CTCs) to present and prove their identities, the IBP-CBD nonetheless found him grossly negligent in the performance of his functions.

ISSUE:

Whether respondent should he held administratively liable for notarizing a Deed of Partition on the basis of the affiants' CTCs. (NO)

RULING:

This Court finds nothing irregular with respondent's act of notarizing. the Deed of Partition on July 23, 2003 on the basis of the affiants' CTCs. The law applicable at the time of the notarization only required the presentation of the CTCs.

In *Mabini* v. *Atty. Kintanar,*this Court dismissed the administrative complaint filed against the lawyer therein because the lawyer complied with the notarial law extant at the time of notarizing the contested document, to wit:

> It is a truism that the duties performed by a Notary Public are *not* just plain ministerial acts. They are so impressed with public interest and dictated by public policy. Such is the case since notarization makes a private document into a public one; and as a public document, it enjoys full credit on its face. However, *a lawyer* cannot be held liable for a violation of his duties as Notary Public when the law in effect at the time of his complained act does not provide any prohibition to the same, as in the case at bench.

Similarly, respondent notarized the Deed of Partition on July 23, 2003, or *prior* to the effectivity of the 2004 Rules on Notarial Practice,of which he is being held accountable by the IBP. However, when the Deed was notarized on July 23, 2003, the applicable law was the notarial law w1der Title *N,* Chapter 11, Article VII of the Revised Administrative Code,Section 251 of which states:

> SECTION 251. *Requirement as to notation of payment* of *(cedula) residence tax.* - Every contract, deed, or other document acknowledged before a notary public shall haw certified thereon that the parties thereto have presented their proper (cedula) residence certificates or are exempt from the (cedula) residence tax, and there shall be entered by the notary public as a part of such certification the number, place of issue, and date of each (cedula) residence certificate as aforesaid.

Thus, it was incorrect for the IBP to have applied the 2004 Rules on Notarial Practice in holding respondent liable for notarizing the Deed of Partition. To reiterate, the Deed was notarized on July 23, 2003. The 2004 Rules on Notarial Practice were not yet in effect at that time.

HERNANIE P. DANDOY, *Complainant*, -versus- ATTY. ROLAND G. EDAYAN, *Respondent*.
A.C. No. 12084, SECOND DIVISION, June 06, 2018, PERLAS-BERNABE, *J.*

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. A notary public should not notarize a document unless the person who signed the same is the very person who executed and personally appeared before him to attest to the contents and the truth of what are stated therein. Section 12, Rule II of the same rules defines "competent evidence of identity" as follows:

> *Section 12. Competent Evidence of Identity. The phrase "competent evidence of identity" refers to the identification of an individual based on:*

> *(a) at least* ***one current identification document issued by an official agency bearing the photograph and signature of the individual****; or*
>
> *(b) the oath or affirmation of one credible witness not privy to the instrument, document or transaction who is personally known to the notary public and who personally knows the individual, or of two credible witnesses* ***neither of whom is privy*** *to the instrument, document or transaction who each personally knows the individual and shows to the notary public documentary identification.*

In this case, respondent, as duly found by the IBP, was remiss in the faithful observance of his duties as a notary public when he failed to confirm the identity of the person claiming to be Jacinto through the competent evidence of identity required by the 2004 Notarial Rules. Jurisprudence provides that a community tax certificate or cedula is no longer considered as a valid and competent evidence of identity not only because it is not included in the list of competent evidence of identity under the Rules; but moreso, it does not bear the photograph and signature of the persons appearing before them, which the Rules deem as the more appropriate and competent means by which notaries public can ascertain the person's identity. Records show that Jacinto passed away on July 13, 1999, and therefore, clearly could not have appeared before respondent to sign and execute the two (2) documents. Had respondent been more circumspect in performing his duties as notary public and asked for the photograph-and-signature-bearing identification document required by the 2004 Notarial Rules, he would have immediately discovered that the person before him was not the person whom he purports to be. All told, by accepting the residence certificates presented by the person who claimed to be Jacinto as evidence of identity, respondent made it appear that Jacinto personally appeared before him and subscribed the SPA and the Deed in violation of the 2004 Notarial Rules and to the detriment of Dandoy and his siblings.

FACTS:

In the complaint, HernieDandoy (Dandoy) alleged that on October 17, 2006, respondent notarized: (a) a Special Power of Attorney (SPA) executed by Jacinto S. Dandoy (Jacinto), his father, in favor of a certain Antoine Cyrus C. Garzo (Garzo) granting the latter authority to offer as collateral two parcels of land located in San Juan, Siquijor; and (b) a Deed of Extrajudicial Settlement of Real Estate (Deed) of Dandoy's late grandmother, EutiquiaSumagang, wherein his father was also one of the parties. According to Dandoy, Jacinto could not have been present before respondent on October 17, 2006 because he passed away on July 13, 1999. He added that, through the SPA and the Deed, Garzo was able to mortgage the two parcels of land as security for a P400,000.00 loan. The mortgage was, however, foreclosed and the mortgaged properties were not redeemed to the great prejudice of Dandoy and his siblings. In support thereof, Dandoy attached a certified true copy of the SPA, death certificate of Jacinto stating that he died on July 13, 1999, a copy of the Deed, and a copy of the Deed of Real Estate Mortgage dated October 17, 2006 executed by Garzo on behalf of Jacinto and Felipe Dandoy (Felipe), Dandoy's uncle.

Respondent, in his Sworn Statement, admitted to having notarized the two documents, but claimed that he verified the identities of the signatories thereto through their residence certificates. He narrated that on the said date, two persons came to his office claiming to be Jacinto and Felipe and asked him to draft and notarize the SPA and the Deed. He added that Felipe even confirmed the identity of Jacinto in the same manner that the witnesses to the documents, who were likewise

present at that time, confirmed the identities of the two. Finally, he submitted that while residence certificates are not mentioned in the list of competent evidence of identity enumerated under Section 12, Rule II of the 2004 Rules on Notarial Practice (2004 Notarial Rules), these are still necessary for the proper execution of the notarial act as it is still prescribed by various laws, i.e., Commonwealth Act No. 465, the Notarial Law, and the Local Government Code.

In the IBP's Report and Recommendation, IBP Investigating Commissioner (IBP-IC) found respondent administratively liable for failure to comply with the 2004 Notarial Rules, and accordingly, recommended that respondent's notarial commission, if existing, be revoked and that he be disqualified from being commissioned as a notary public for a period of two (2) years. IBP-IC found that respondent failed to confirm the identity of the person claiming to be Jacinto through the competent evidence of identity required by the 2004 Notarial Rules the controlling rules on notarial practice at the time of the notarization of the SPA and the Deed, not the Notarial Law invoked by respondent.

The IBP-IC, however, found the evidence insufficient to show that respondent wilfully and maliciously conspired with Garzo and Felipe in depriving Dandoy and his siblings of their grandmother's property in order to hold him administratively liable under the CPR. The IBP Board of Governors adopted the report of the IBP IC.

ISSUE:

Whether the IBP correctly found respondent liable for violation of the 2004 Notarial Rules. (YES)

RULING:

Time and again, the Court has emphasized that the act of notarization is impressed with public interest. 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 credence. As such, a notary public must observe with utmost care the basic requirements in the performance of his duties in order to preserve the confidence of the public in the integrity of the notarial system. In this light, the Court has ruled that notaries must inform themselves of the facts they certify to; most importantly, they should not take part or allow themselves to be part of illegal transactions.

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. A notary public should not notarize a document unless the person who signed the same is the very person who executed and personally appeared before him to attest to the contents and the truth of what are stated therein. Section 12, Rule II of the same rules defines "competent evidence of identity" as follows:

> Section 12. Competent Evidence of Identity. The phrase "competent evidence of identity" refers to the identification of an individual based on:
>
> (a) at least **one current identification document issued by an official agency bearing the photograph and signature of the individual**; or

> (b) the oath or affirmation of one credible witness not privy to the instrument, document or transaction who is personally known to the notary public and who personally knows the individual, or of two credible witnesses **neither of whom is privy** to the instrument, document or transaction who each personally knows the individual and shows to the notary public documentary identification.

In this case, respondent, as duly found by the IBP, was remiss in the faithful observance of his duties as a notary public when he failed to confirm the identity of the person claiming to be Jacinto through the competent evidence of identity required by the 2004 Notarial Rules. Jurisprudence provides that a community tax certificate or *cedula* is no longer considered as a valid and competent evidence of identity not only because it is not included in the list of competent evidence of identity under the Rules; but moreso, it does not bear the photograph and signature of the persons appearing before them, which the Rules deem as the more appropriate and competent means by which notaries public can ascertain the person's identity. Records show that Jacinto passed away on July 13, 1999, and therefore, clearly could not have appeared before respondent to sign and execute the two (2) documents. Had respondent been more circumspect in performing his duties as notary public and asked for the photograph-and-signature-bearing identification document required by the 2004 Notarial Rules, he would have immediately discovered that the person before him was not the person whom he purports to be. All told, by accepting the residence certificates presented by the person who claimed to be Jacinto as evidence of identity, respondent made it appear that Jacinto personally appeared before him and subscribed the SPA and the Deed in violation of the 2004 Notarial Rules and to the detriment of Dandoy and his siblings.

Moreover, the statements made by the witnesses to the documents as regards the identity of the persons who claimed to be Felipe and Jacinto and those made by the person purporting to be Felipe as regards the latter do not comply with the 2004 Notarial Rules' requirements on competent evidence of identity. Section 12 clearly states that the credible witness/es making the oath – as to the identity of the individual subscribing the document must: not be a privy to the document, etc.; personally know/s the individual subscribing; and, must either be (a) personally known to the notary public, or (b) must show to the notary public a photograph-and-signature-bearing identification document. In this case, Felipe and Garzo were both privies to the document, and the records are bereft of any evidence showing that the other witnesses to the document had shown to respondent the documentary identification which the 2004 Notarial Rules require.

The Court also noted that, as a lawyer, respondent is expected at all times to uphold the integrity and dignity of the legal profession and refrain from any act or omission which might erode the trust and confidence reposed by the public in the integrity of the legal profession. By notarizing the subject documents, he engaged in unlawful, dishonest, immoral, or deceitful conduct which makes him liable as well for violation of the CPR, particularly Canon 1, Rule 1.01.

Respondent's failure to properly perform his duty as a notary public resulted not only in damage to those directly affected by the notarized document, but also in undermining the integrity of the office 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. Consistent with prevailing jurisprudence, he should be meted out with the modified penalty of immediate revocation of his

notarial commission, if any, disqualification from being commissioned as notary public for a period of two (2) years, and suspension from the practice of law for one (1) year.

WHEREFORE, the Court hereby finds respondent Atty. Roland G. Edayan (respondent) **GUILTY** of violation of the 2004 Rules on Notarial Practice and of the Code of Professional Responsibility. Accordingly, the Court resolves to: **SUSPEND** him from the practice of law for one (1) year; **REVOKE** his incumbent commission as a notary public, if any; and, **PROHIBIT** him from being commissioned as a notary public for two (2) years. He is **WARNED** that a repetition of the same offense or similar acts in the future shall be dealt with more severely.

HEIR OF HERMINIGILDO UNITE, *Complainant,* -versus- ATTY. RAYMUND P. GUZMAN, *Respondent.*

A.C. No. 12062, SECOND DIVISION, July 2, 2018, PERLAS-BERNABE, *J.*

Under Section 2(b)(1) and (2), Rule IV of the Notarial Rules, 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 is "personally known to the notary public or otherwise identified by the notary public through competent evidence of identity."

Atty. Guzman clearly failed to faithfully observe his duties as a notary public when he failed to confirm the identity of Torrices through the competent evidence of identity required by the Notarial Rules by accepting only the CTC of Torrices. Jurisprudence provides that a community tax certificate or cedula is ***no longer considered as a valid and competent evidence of identity*** *not only because it is not included in the list of competent evidence of identity under the Rules; more importantly, it does not bear the photograph and signature of the person appearing before notary public which the Rules deem as the more appropriate and competent means by which they can ascertain the person's identity.*

FACTS:

Florentino Unite (Complainant) alleged that Atty. Raymund Guzman (Atty. Guzman) notarized a Deed of Self Adjudication with Sale and/with Deed of Absolute Sale executed by Jose Unite Torrices (Torrices), claiming to be the sole heir of Herminigildo, in favor of one Francisco U. Tamayo (Tamayo), covering a parcel of land located in Ballesteros, Cagayan and covered by a title under Herminigildo's name. According to complainant, the Deed was executed with only **Torrices' community tax certificate (CTC)** as evidence of identity. Complainant asserted that he is the only surviving heir of his father, Herminigildo, as Torrices is his cousin. As a result of respondent's acts, the Deed was recorded in the Registry of Deeds, which caused the cancellation of his father's title and the issuance of a new one in the name of Tamayo.

In his defense, Atty. Guzman claimed that he complied with the requirements of the Notarial Rules. Particularly, he verified the identity of the parties to the Deed from their current government identification documents with pictures and CTCs.

A Petition for Disbarment was filed against Atty. Guzman. IBP Investigating Commissioner (IBP-IC) found Atty. Guzman administratively liable for violation of the Notarial Rules for failure to confirm the identity of the parties to the Deed through the presentation of competent evidence of identity as required by the Rules. IBP Board of Governors adopted IBP-IC's report and recommendation.

ISSUE:

Whether or not Atty. Guzman violated the Notarial Rules. (YES)

RULING:

Under Section 2(b)(1) and (2), Rule IV of the Notarial Rules, 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 is ***"personally known to the notary public or otherwise identified by the notary public through competent evidence of identity."*** Section 12, Rule II of the same rules, as amended by the February 19, 2008 *En Banc* Resolution in A.M. No. 02-8-13-SC, defines "competent evidence of identity" thus:

> Section 12. *Competent Evidence of Identity.* — The phrase "competent evidence of identity" refers to the identification of an individual based on:
>
> (a) At least **one current identification document issued by an official agency bearing the photograph and signature of the individual**; xxxx

Atty. Guzman clearly failed to faithfully observe his duties as a notary public when he failed to confirm the identity of Torrices through the competent evidence of identity required by the Notarial Rules. This fact is clear from the Deed itself which shows that Torrices presented only his CTC when he appeared before respondent. Jurisprudence provides that a community tax certificate or *cedula* is **no longer considered as a valid and competent evidence of identity** not only because it is not included in the list of competent evidence of identity under the Rules; more importantly, it does not bear the photograph and signature of the person appearing before notary public which the Rules deem as the more appropriate and competent means by which they can ascertain the person's identity.

Lastly, as a lawyer, Atty. Guzman is expected at all times to uphold the integrity and dignity of the legal profession and refrain from any act or omission which might erode the trust and confidence reposed by the public in the integrity of the legal profession. By notarizing the subject Deed, he engaged in an unlawful, dishonest, immoral, or deceitful conduct which makes him liable as well for violation of the CPR, particularly Rule 1.01, Canon 1 thereof 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.

7. Sanctions
8. Relation to Code of Professional Responsibility

II. JUDICIAL ETHICS

A. Sources

1. New Code of Judicial Conduct for the Philippine Judiciary (Bangalore Draft)

BERNARDITA F. ANTIPORDA, *Complainant*, -versus- FRANCISCO A. ANTE, JR., Presiding Judge, Municipal Trial Court in Cities, Vigan City, Ilocos Sur, *Respondent*.
A.M. No. MTJ-18-1908, EN BANC, January 16, 2018, PER CURIAM.

A judge should always conduct himself in a manner that would preserve the dignity, independence and respect for himself/herself, the Court, and the Judiciary as a whole. In other words, a judge should possess the virtue of gravitas. Judges are required to always be temperate, patient, and courteous, both in conduct and in language.

Respondent's demeanor and actuations, which resulted in physical injuries to complainant, are in direct contravention of the virtues of patience, sobriety, and self-restraint so espoused by the Court and highly expected of a member of the judiciary. Regardless of the reason for the incident, respondent, being a magistrate, should have observed judicial temperament which requires him to be always temperate, patient, and courteous, both in conduct and in language.

FACTS:

Complainant alleged that in the morning of March 2, 2014, she was in the backyard of a house located at Rizal St., Barangay III, Vigan City, Ilocos Sur, when respondent, who was in the adjacent lot, suddenly confronted her by saying, "Why are you glaring/pouting at me?" Then, he slapped her face several times, and whipped her with a dog chain. He also pointed a .45 caliber pistol at complainant, as well as her boarders and workers, who witnessed the incident.

Although complainant admitted having glared at respondent at the time, she explained that it was because she discovered that respondent had maliciously reported to the Office of the City Engineer of Vigan that her house was being renovated without the necessary building permit in spite of the fact that she secured one.

The OCA referred the matter to Judge Balloguing of the RTC of Vigan City for investigation, report, and recommendation.

In her Report, Judge Balloguing found that complainant had indeed sustained physical injuries inflicted by respondent. However, she believed that it was complainant who held the steel chain, which she used to defend herself when respondent approached her. Judge Balloguing also found that respondent had a grudge against complainant because he reported the illegal renovation of her house, opining that he could have instead advised her to secure the necessary building permit. Judge Balloguing recommended that respondent be found guilty of acts unbecoming of a judge and be sanctioned with either a fine or suspension.

The OCA, while concurring with Judge Balloguing's conclusions of fact, disagreed with respect to the recommended penalty.

ISSUE:

Whether respondent should be held administratively liable. (YES)

RULING:

Canon 2 of the New Code of Judicial Conduct states that "integrity is essential not only to the proper discharge of the judicial office but also to the personal demeanor of judges."

A judge should always conduct himself in a manner that would preserve the dignity, independence and respect for himself/herself, the Court, and the Judiciary as a whole. In other words, a judge should possess the virtue of *gravitas*. Judges are required to always be temperate, patient, and courteous, both in conduct and in language.

Apart from being a display of arrogance, respondent's demeanor and actuations, which resulted in physical injuries to complainant, are in direct contravention of the virtues of patience, sobriety, and self-restraint so espoused by the Court and highly expected of a member of the judiciary. Regardless of the reason for the incident, respondent, being a magistrate, should have observed judicial temperament which requires him to be always temperate, patient, and courteous, both in conduct and in language.

Respondent's acts, therefore, constitute grave misconduct, which the Court defines as "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer."

Since respondent has, however, retired on November 7, 2017 and hence, could not anymore be dismissed from service, the Court, instead, found it proper to order the forfeiture of all of his retirement benefits (except accrued leave credits), and further, disqualify him from reinstatement or appointment to any public office, including government-owned or controlled corporations.

ATTY. JEROME NORMAN L. TACORDA an LETICIA RODRIGO-DUMDUM, *Complainant*, -versus- JUDGE PERLA V. CABRERA-FALLER and OPHELIA G. SULUEN of the RTC, Branch 90, Dasmariñas, Cavite, *Respondents*.

A.M. No. RTJ-16-2460, SECOND DIVISION, June 27, 2018, CARPIO, *J*.

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. Section 5, Canon 6 of the New Code of Judicial Conduct also provides that judges must perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.

FACTS:

A complaint was filed by Atty. Jerome Norman L. Tacorda (Atty. Tacorda) and Leticia Rodrigo-Dumdum (Rodrigo-Dumdum) against Presiding Judge Perla V. Cabrera-Faller (Judge Cabrera-

Faller) and Ophelia G. Suluen (Suluen), both of Branch 90, Regional Trial Court (RTC), Dasmariñas City, Cavite, for Gross Ignorance of the Law, Gross Inefficiency, Delay in the Administration of Justice, and Impropriety.

The complaint stems from a Civil Case No. 398810, entitled Sunny S. Salvilla, Kevin S. Salvilla, and Justin S. Salvilla v. Spouses Edwin Dumdum and Leticia R. Dumdum (Spouses Dumdum) initially pending before Judge Fernando L. Felicen (Judge Felicen), who later inhibited himself from the case and the case was raffled to the sala of Judge Cabrera-Faller.

Upon the receipt of the records of the case, Judge Cabrera-Faller set a clarificatory hearing, which was, however, rescheduled. The case was then set for pre-trial, however, it was found out that the case had already been referred to for mediation, which suspended the proceedings until the receipt of the Mediator's Report.

The plaintiffs of the civil case belatedly filed their Pre-Trial Brief, which prompted Spouses Dumdum to file a Motion to Expunged the Pre-Trial Brief. Almost two years later, Judge Cabrera-Faller denied the motion and set the case for a pre-trial conference, which was, again, rescheduled as the respondent-Judge was hospitalized.

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.

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.

The Office of the Court Administrator found that the allegation of gross ignorance of the law against respondents was bereft of any evidence. However, Judge Cabrera-Faller was found guilty of gross inefficiency and delay in the administration of justice, while Suluen was cleared of her administrative liability as there was no evidence on record to substantiate the charges.

Finding Judge Cabrera-Faller guilty of gross inefficiency and delay of justice, the OCA recommended the imposition of a P20,000 fine 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 Judge Cabrera-Faller guilty of gross ignorance of the law. (NO)
2) Whether or not Judge Cabrera-Faller was guilty of gross inefficiency and delay of justice. (YES)

RULING:

The Supreme Court agreed with the findings of the Office of the Court Administrator.

First, as to the allegation of gross ignorance of the law, we find that Atty. Tacorda and Rodrigo-Dumdum failed to substantiate the charges against Judge Cabrera-Faller and Suluen.

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. Complainants also failed to allege any gross and patent ignorance of the law which would indicate any bad faith.

However, the Supreme Court found 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. As correctly pointed out by the OCA, the responsibility of acting and resolving a pending matter or incident before a court rests primarily on the judge.

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. Section 5, Canon 6 of the New Code of Judicial Conduct also provides that judges must perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.

The Court has emphasized that judges must 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. 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 Expunged 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.

Thus, the Supreme Court found Judge Cabrera-Faller guilty and imposed on her a fine of P20,000, which shall be deducted from whatever amounts may still be due her.

OFFICE OF THE COURT ADMINISTRATOR, *Complainant*, -versus- JUDGE PERLA V. CABRERA-FALLER, OFFICER-IN-CHARGE OPHELIA G. SULUEN and PROCESS SERVER RIZALINO RINALDI B. PONTEJOS, all of the RTC, Branch 90, Dasmariñas, Cavite, *Respondents*.
A.M. No. RTJ-11-2301, EN BANC, January 16, 2018.

OFFICE OF THE COURT ADMINISTRATOR, *Complainant*, -versus- PRESIDING JUDGE FERNANDO L. FELICEN, CLERK OF COURT V ATTY. ALLAN SLY M. MARASIGAN, SHERIFF IV ANSELMO P. PAGUNSAN, JR., COURT STENOGRAPHERS ROSALIE MARANAN and TERESITA P. REYES, COURT INTERPRETER IMELDA M. JUNTILLA, and PROCESS SERVER HIPOLITO O. FERRER, all of the RTC, Branch 20, Imus, Cavite; PRESIDING JUDGE NORBERTO J. QUISUMBING, JR., CLERK OF COURT ATTY. MARIA CRISTITA A. RIVAS-SANTOS, LEGAL RESEARCHER MANUELA O. OSORIO, SHERIFF IV FILMAR M. DE VILLA, COURT STENOGRAPHERS MARILOU CAJIGAL, WENDILYN T. ALMEDA and HELEN B. CARALUT, COURT INTERPRETER ELENITA T. DE VILLA, and PROCESS SERVER ELMER S. AZCUETA, all of the RTC, Branch 21, Imus, Cavite; PRESIDING JUDGE CESAR A. MANGROBANG, CLERK OF COURT VI ATTY. REGALADO E. EUSEBIO, CLERK OF COURT V ATTY. SETER M. DELA CRUZ-CORDEZ, LEGAL RESEARCHER DEVINA A. REYES BERMUDEZ, COURT STENOGRAPHERS PRISCILLA P. HERNANDEZ, NORMITA Z. FABIA, MERLY O. PARCERO, and JOYCE ANN F. SINGIAN, COURT INTERPRETER MICHELLE A. ALARCON, and PROCESS SERVER ELMER S. AZCUETA, all of the RTC, Branch 22, Imus, Cavite; EXECUTIVE JUDGE PERLA V. CABRERA-FALLER, CLERK OF COURT ZENAIDA C. NOGUERA, SHERIFF IV TOMAS C. AZURIN, OIC LEGAL RESEARCHER OPHELIA G. SULUEN, COURT STENOGRAPHERS JESUSA B. SAN JOSE, ROSALINA A. COSTUNA, and MARIA LOURDES M. SAPINOSO, COURT INTERPRETER MERLINA S. FERMA, and PROCESS SERVER RIZALINO RINALDI B. PONTEJOS, all of the RTC, Branch 90, Dasmariñas, Cavite, *Respondents*.
A.M. No. RTJ-11-2302, EN BANC, January 16, 2018.

RE: ANONYMOUS LETTER-COMPLAINT AGAINST JUDGE PERLA V. CABRERA-FALLER, Branch 90, Regional Trial Court, Dasmariñas City, Cavite, relative to Civil Case No. 1998-08
A.M. No. 12-9-188-RTC, EN BANC, January 16, 2018, SERENO, *C.J.*

For a judge to be liable for gross ignorance of the law, it is not enough that the decision, order or actuation in the performance of official duties is contrary to existing law and jurisprudence. It must also be proven that the judge was moved by bad faith, fraud, dishonesty or corruption; or committed an error so egregious that it amounted to bad faith.

But when there is persistent disregard of well-known rules, judges not only become liable for gross ignorance of the law, they commit gross misconduct as well. It is then that a mistake can no longer be regarded as a mere error of judgment, but one purely motivated by a wrongful intent.

The four courts herein have allowed themselves to become havens for "paid-for annulments." Their apparent conspiracy with the counsels of the parties in order to reflect paper compliance with the rules if not complete disregard thereof, as well as their failure to manage and monitor the regularity in the performance of duties by their court personnel, shows not only gross ignorance of the law but also a wrongful intention that smacks of misconduct.

FACTS:

A.M. No. RTJ-11-2301
In a report, the Office of the Court Administrator (OCA) narrated its findings on the judicial audit conducted on 15-17 September 2010 at RTC Dasmariñas 90.

At the time of audit, the court had a total case load of 827 cases, 417 of which were criminal and 410, civil. Of the criminal cases, the judicial audit team found that the court had failed to take action on three cases for a considerable length of time. The civil cases proved more problematic. Still not acted upon from the time of their filing were 106 cases, some of which went as far back as 2008.

The team noted several irregularities in the petitions for declaration of nullity and annulment of marriage:
1. Improper service of summons
2. No appearance by the Solicitor General
3. No categorical finding on whether collusion existed between the parties/no collusion report at all
4. No pretrial briefs
5. No formal offer of exhibits/evidence
6. Non-attachment of the minutes to the records
7. Irregular psychological evaluation reports
8. Absence of the public prosecutor's signature in the *jurat* of the judicial affidavit of the petitioner in one case

In a resolution, the Court resolved to docket the OCA Report as A.M. No. RTJ-11-2301, a case for gross irregularity in the conduct of proceedings in petitions for declaration of nullity and annulment of marriage.

A.M. No. RTJ-11-2302
In a report, the OCA narrated its findings on the judicial audit conducted on 3-11 February 2011 at RTC Imus 20, 21 and 22; and RTC Dasmariñas 90. According to the OCA, the four branches have generally violated A.M. No. 02-11-10-SC and specific provisions of the Rules of Court in handling petitions for declaration of nullity and annulment of marriage, adoption, and correction of entries.

In a resolution, the Court considered the irregularities found by the audit team sufficient to warrant the conduct of a full investigation. Accordingly, the OCA Report was treated as an administrative complaint against the judges and personnel of the four branches, and they were required to comment on the findings.

A.M. No. 12-9-188-RTC
In a letter addressed to the OCA, a "concerned employee" of RTC Dasmariñas 90 claimed to have personal knowledge that the decision rendered by Judge Cabrera-Faller in Civil Case No. 1998-08 was for a cash consideration.

At the time of the receipt of the anonymous letter, a full investigation by the OCA of the proceedings in A.M. No. RTJ-11-2302 was underway; hence, it recommended that the letter be included among the subjects of the investigation. In a resolution, the Court approved the OCA recommendation and consolidated A.M. No. 12-9-188-RTC with A.M. No. RTJ-11-2302.

In a Resolution dated 20 October 2015, the Court referred this administrative case, together with A.M. Nos. RTJ-11-2301 and RTJ-11-2302, to the CA for immediate raffle among the members thereof.

RECOMMENDATION OF THE INVESTIGATING JUSTICE
The instant administrative cases were raffled to CA Associate Justice Victoria Isabel A. Paredes.

A.M. No. RTJ-11-2301
Justice Paredes agreed with the OCA finding that Judge Cabrera-Faller did not take appropriate action in all the cases that had not been acted upon for a considerable length of time from the dates of their filing. In this light, Justice Paredes recommends that the judge be fined for failure to comply with the Court's Resolution.

A.M. No. RTJ-11-2302
On the allegation of improper venue for the declaration of nullity and annulment of marriage cases lodged against all four judges, Justice Paredes found only Judge Felicen liable. Justice Paredes recalled that improper venue as a ground to dismiss may be raised only by the parties to the action. In this case, none of the parties, or even the State, raised this ground during the proceedings in the audited cases. The only one who raised it was the respondent in Civil Case No. 2785-09 filed before RTC Imus 20. The respondent thereon sought to dismiss the petition on the ground that none of the parties were residents of Cavite. Thus, Justice Paredes found that Judge Felicen erred when he failed to dismiss the case.

On the improper service of summons, Justice Paredes clears all four judges. She indicates that the defense of an improper service of summons may be waived by failing to seasonably object to its jurisdiction. In all the audited cases, not one of the respondents upon whom a substituted service of summons was made filed a timely motion to dismiss the action for lack of jurisdiction.

On the extraordinary speed with which petitions were granted, Justice Paredes finds Judge Felicen guilty of grave abuse of authority for granting petitions for declaration of nullity and annulment of marriage with extraordinary speed. Justice Paredes found that Judge Felicen carried the highest percentage of petitions granted in six months or less at 77%.

Justice Paredes finds that Judge Mangrobang's cavalier attitude towards marriage — shown when he granted a petition 25 days after its filing — does not speak well of the reverence that the Constitution, society and Filipino culture holds for marriage as the foundation of the family. She finds him guilty of grave abuse of authority.

Judge Cabrera-Faller was also found guilty of grave abuse of authority for granting petitions for declaration of nullity and annulment of marriage with extraordinary speed.

On the other hand, Justice Paredes recommends that the charges against Judge Quisumbing be dismissed.

A.M. No. 12-9-188-RTC
Justice Paredes points out that the issue in this administrative matter is whether money exchanged hands for a favorable judgment in Civil Case No. 1998-08. She holds the considered

opinion that the purported graft and corruption reported in the anonymous complaint is just a figment of the letter writer's imagination. Thus, she recommends that the charge against Judge Cabrera-Faller be dismissed.

ISSUE:

Whether the four judges (Judge Fernando L. Felicen, Judge Norberto J. Quisumbing, Jr., Judge Cesar A. Mangrobang, Judge Perla V. Cabrera-Faller) should be held administratively liable. (YES)

RULING:

In the present administrative disciplinary proceedings against judges and court personnel, respondents spring the defense that no objection from the parties, the public prosecutor, the Solicitor General, or the State was ever raised against these alleged irregularities. The presence or absence of objections cannot be the measure by which our public officials should perform their sacred duties. First and foremost, they should be guided by their conscience; and, in the case of those employed in the judiciary, by a sense of responsibility for ensuring not only that the job is done, but that it is done with a view to the proper and efficient administration of justice.

Judges and court personnel are expected to avoid not just impropriety in their conduct, but even the mere appearance of impropriety. In the instant administrative cases, respondents miserably failed in this regard. Note must be taken that what prompted the judicial audit in the four courts involved herein are reports that they have become havens for "paid-for annulments."

Improper Venue

A.M. No. 02-11-10-SC (Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages), provides that, in the case of nonresident respondents, petitions shall be filed in the Family Court of the province or city where they may be found in the Philippines, at the election of the petitioner.

In these cases, the records are replete with glaring circumstances that should have created doubt in the minds of the respondent judges as to the veracity of the residential addresses declared in the petitions. In all four courts, the OCA and the judicial audit teams found that most of the given addresses were vague or incomplete.

More important, cases where parties have the same address as those in another case cannot be explained away. In fact, out of the four respondent judges, only Judge Quisumbing attempted to give an explanation of this anomaly. But his statement, instead of clarifying the matter, only operated to strengthen the cases against them. He offers the possibility that the petitioners really lived in the same house, because they were separated from their respective spouses. If this is indeed the case, then the fact that these parties were represented by the same counsels shines an even more disturbing light upon the observed irregularity.

It would appear that counsels maintain residences within the jurisdiction of friendly courts for their declaration of nullity and annulment of marriage cases. Considering, however, that the notices sent to most of these addresses were also "returned to sender," the SC cannot even make the kindest assumption that the parties actually resided in those addresses just for the sole

purpose of having their marriages declared null and void or annulled by a friendly court. What is clear is that there is a conspiracy, at least between the counsels of these parties and the four courts, in order to reflect paper compliance with the rule on venue.

Improper Service of Summons

Section 6 of A.M. No. 02-11-10-SC provides that the service of summons shall be governed by Rule 14 of the Rules of Court. Under that Rule, whenever practicable, the summons shall be served by handing a copy thereof to respondents in person or, if they refuse to receive and sign for it, by tendering it to them. However, if the service cannot be done personally for justifiable causes and within a reasonable time, it may be effected by (a) leaving copies of the summons with some other person of suitable age and discretion then residing at respondent's house; or (b) leaving copies of the summons with some competent person in charge of the respondent's office or regular place of business.

Manotoc v. CA emphasized that while substituted service of summons is permitted, it is extraordinary in character and a departure from the usual method of service. As such, it must faithfully and strictly comply with the prescribed requirements and circumstances authorized by the rules.

In these cases, it was clear that no faithful and strict compliance with the requirements for substituted service of summons was observed by Sheriffs De Villa and Pagunsan and Process Servers Ferrer, Azcueta, and Pontejos.

Having administrative supervision over court personnel, Clerks of Court Marasigan and Cordez and OIC Suluen had the responsibility to monitor compliance with the rules and regulations governing the performance of their duties. They should have insisted on strict compliance with the rules and imposed a corresponding punishment for repeated violations.

The same is true with regard to the four respondent judges in these cases. That they allowed and tolerated noncompliance with the strict requirements of the rules for a long period of time shows their unfitness to discharge the duties of their office. Despite the improper service of summons, they continued with the conduct of the proceedings in the petitions for declaration of nullity and annulment of marriage. These findings tie up with the allegation of the OCA and the judicial audit teams that a conspiracy existed and thereby turned the courts in Cavite into havens for "paid-for annulments."

Lack of Collusion Report

Under Section 8 (1) of A.M. No. 02-11-10-SC, the respondent is required to submit an Answer within 15 days from receipt of the summons. If no answer is filed, the court shall order the public prosecutor to investigate whether collusion exists between the parties.

Notably, the rules do not merely ask whether the public prosecutor is in a position to determine whether collusion exists. They require that the investigating prosecutor determine whether or not there is collusion. In A.M. No. RTJ-11-2301, Judge Cabrera-Faller tolerated the public prosecutor's practice of submitting investigation reports stating merely that "the undersigned

Prosecutor is not in the position to tell whether collusion exists." Judge Cabrera-Faller still proceeded with the hearing of the cases.

Furthermore, in declaration of nullity and annulment of marriage cases, the investigation report of the prosecutor on whether there is collusion between the parties is a condition *sine qua non* for setting the case for pretrial or further proceedings. Thus, it matters not that the public prosecutors manifested before Judges Felicen, Quisumbing and Mangrobang that they would just actively participate in the proceedings to safeguard against collusion or fabricated evidence, in lieu of an investigation report on collusion. No further proceedings should have been held without the investigation report.

In *Corpus v. Ochotorena*, the Court found the respondent judge therein administratively liable for failure to observe the mandatory requirement of ordering the investigating public prosecutor to determine whether collusion existed between the parties. The Court emphasized that the active participation of the public prosecutor in the proceedings of the case could not take the place of the investigation report.

Failure to Serve Copies of the Decisions on Respondents

In certain cases before RTC Imus 22 and 20, copies of the decision sent to the respondents' addresses were returned to sender with the notations "unknown," "no such name," or "no such address." Yet, certificates of finality were issued by the court.

These notations should have put Judges Felicen and Mangrobang and Clerks of Court Marasigan and Cordez on guard regarding the propriety of issuing a certificate of finality, considering that the notations meant that this was not just a simple matter of failure of the parties to inform the court of their new addresses. At best, their failure to be circumspect constituted neglect of duty. At worst, it was another manifestation of the conspiracy to grant fast and easy annulments to those who needed it.

Grant of Petitions at Extraordinary Speed

The surrounding circumstances in these cases for the declaration of nullity and annulment of marriage render the speed with which they were decided suspect.

More important, the findings in A.M. No. RTJ-11-2301 involving Judge Cabrera-Faller include those of the judicial audit team showing a number of criminal and civil cases pending before RTC Dasmariñas 90 that have not been acted upon for a considerable length of time; some of them, even as far back as the time of their filing.

During the material period when Judge Mangrobang was deciding the declaration of nullity and annulment of marriage cases with extraordinary speed, he failed to resolve two pending motions before his *sala* within the 90-day reglementary period. In *Castro v. Mangrobang*, this Court found him guilty of undue delay in resolving pending matters and fined him in the amount of P10,000. In another case, he was admonished for his failure to decide a motion on time.

Judge Felicen had also been previously admonished to be more mindful of his duties, particularly in the prompt disposition of cases pending before his sala.

These independent findings lend weight to the conclusion of the OCA and the judicial audit teams that the irregularities in the proceedings before the four courts were systemic and deliberate, rather than caused by inadvertence or mere negligence. If it is true that the four judges are committed to the speedy resolution and disposition of cases, this commitment should have been reflected in all the cases pending before their courts, and not just in the declaration of nullity and annulment of marriage cases.

LIABILITY OF JUDGES FELICEN, QUISUMBING, MANGROBANG AND CABRERA-FALLER

A blatant disregard of the provisions of A.M. No. 02-11-10-SC constitutes gross ignorance of the law. The SC has ruled that for a judge to be liable for gross ignorance of the law, it is not enough that the decision, order or actuation in the performance of official duties is contrary to existing law and jurisprudence. It must also be proven that the judge was moved by bad faith, fraud, dishonesty or corruption; or committed an error so egregious that it amounted to bad faith.

But when there is persistent disregard of well-known rules, judges not only become liable for gross ignorance of the law, they commit gross misconduct as well. It is then that a mistake can no longer be regarded as a mere error of judgment, but one purely motivated by a wrongful intent.

The four courts herein have allowed themselves to become havens for "paid-for annulments." Their apparent conspiracy with the counsels of the parties in order to reflect paper compliance with the rules if not complete disregard thereof, as well as their failure to manage and monitor the regularity in the performance of duties by their court personnel, shows not only gross ignorance of the law but also a wrongful intention that smacks of misconduct.

The four judges also violated CANON 2, Secs. 1, 2, & 3 and CANON 6, Secs. 3, 5, & 7 of the New Code of Judicial Conduct for the Philippine Judiciary.

As judges, more than anyone else, they are required to uphold and apply the law. They should maintain the same respect and reverence accorded by the Constitution to our society's institutions, particularly marriage. Instead, their actuations relegated marriage to nothing more than an annoyance to be eliminated. In the process, they also made a mockery of the rules promulgated by the SC.

ATTY. BERTENI C. CAUSING and PERCIVAL CARAG MABASA, *Complainants*, -versus-
PRESIDING JUDGE JOSE LORENZO R. DELA ROSA, Regional Trial Court, Branch 4, Manila, *Respondent.*
OCA IPI No. 17-4663-RTJ, SECOND DIVISION, March 07, 2018, CAGUIOA, *J.*

Although not without exceptions, it is settled that the function of a motion for reconsideration is to point out to the court the error that it may have committed and to give it a chance to correct itself. The Court elaborated that the general rule that the purpose of a motion for reconsideration is to grant an opportunity for the court to rectify any actual or perceived error attributed to it by re-examination of the legal and factual circumstances of the case. The wisdom of this rule is to expedite the resolution of the issues of the case at the level of the trial court so it can take a harder look at the records to come up with a more informed decision on the case.

FACTS:

Atty. Causing and his client Percy Lapid charged respondent presiding judge of RTC Manila for with gross ignorance of the law, gross misconduct and gross incompetence for reversing[2] the dismissal of Criminal Case Nos. 09-268685-86 entitled *People v. Eleazar, et al.* (Libel Cases), wherein Mabasa was one of the accused. Complainants alleged that the libel case was dismissed on the ground that the right of the accused to have speedy disposition of the case is violated. The prosecution filed a Motion for Reconsideration, which was granted. The complainants questioned the granting of such motion because, according to them, it was elementary for respondent Judge Dela Rosa to know that the prior dismissal of a criminal case due to a violation of the accused's right to speedy trial is equivalent to a dismissal on the merits of the case and, as such, granting the prosecution's Motion for Reconsideration was tantamount to a violation of the constitutional right against double jeopardy.

Respondent Judge Dela Rosa claimed that the November 23, 2015 Resolution was issued in good faith and after evaluation of the evidence submitted by each party. He denied that the same was motivated by bad faith, ill will, fraud, dishonesty, corruption or caprice. In fact, Respondent Judge issued this as a matter of fairness – that is, to give the private complainants in the Libel Cases an opportunity to pursue against Mabasa and his co-accused the civil aspect of the Libel Cases. The OCA recommended that the administrative complaint against Judge Dela Rosa be dismissed for lack of merit.

ISSUE:

Whether the Supreme Court should adopt the decision of the OCA. (YES)

RULING:

After considering the allegations in the Complaint and respondent Judge Dela Rosa's Comment, the OCA found that in the absence of any proof that respondent Judge Dela Rosa was ill-motivated in issuing the November 23, 2015 Order and that he had, in fact, issued his June 20, 2016 Resolution reversing himself, the charge of gross ignorance of the law should be dismissed. Respondent Judge has already admitted that he made a mistake in issuing the said order as this would have constituted a violation of the right of the accused against double jeopardy. To rectify his error, he granted the motion for reconsideration filed by the accused.

Although not without exceptions, it is settled that the function of a motion for reconsideration is to point out to the court the error that it may have committed and to give it a chance to correct itself. The Court elaborated that the general rule that the purpose of a motion for reconsideration is to grant an opportunity for the court to rectify any actual or perceived error attributed to it by re-examination of the legal and factual circumstances of the case. The wisdom of this rule is to expedite the resolution of the issues of the case at the level of the trial court so it can take a harder look at the records to come up with a more informed decision on the case.

RE: ANONYMOUS LETTER COMPLAINT (with Attached Pictures) AGAINST ASSOCIATE JUSTICE NORMANDIE B. PIZARRO, COURT OF APPEALS
A.M. No. 17-11-06-CA, EN BANC, March 13, 2018, MARTIRES, *J.*

The rationale for the requirement that complaints against judges and justices of the judiciary must be accompanied by supporting evidence is to protect magistrates from the filing of flimsy and virtually unsubstantiated charges against them. This is consistent with the rule that in administrative proceedings, the complainants bear the burden of proving the allegations in their complaints by substantial evidence. If they fail to show in a satisfactory manner the facts upon which their claims are based, the respondents are not obliged to prove their exception or defense.

FACTS:

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.

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 likewise categorically denied having a mistress.

ISSUE:

Whether Justice Pizarro is guilty of the accusations against him for which he may be held administratively liable. (YES)

RULING:

The rationale for the requirement that complaints against judges and justices of the judiciary must be accompanied by supporting evidence is to protect magistrates from the filing of flimsy and virtually unsubstantiated charges against them. This is consistent with the rule that in administrative proceedings, the complainants bear the burden of proving the allegations in their complaints by substantial evidence. If they fail to show in a satisfactory manner the facts upon which their claims are based, the respondents are not obliged to prove their exception or defense.

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.

As regards the accusation of habitually playing in casinos, it is clear that the anonymous complaint was not supported by public records of indubitable integrity as required by the rules. Nevertheless, it is equally undisputed, as in fact it was admitted, that Justice Pizarro was the same person playing in a casino in Clark, Pampanga, as shown by the photographs attached to the anonymous complaint. He also admitted that he played in a casino sometime in 2009. The Court cannot simply ignore this evident and admitted fact. Citing Section 14(4)(a) of P.D. No. 1869, wherein it is stated that **government officials connected directly with the operation of the government or any of its agencies are not allowed to play in the casinos, Judge Pizarro is administratively liable.** A "government official connected directly to the operation of the government or any of its agencies" is a government officer who performs the functions of the government on his own judgment or discretion**.** Applying the above definition to the present case, it is clear that Justice Pizarro is covered by the term "government official connected directly with the operation of the government." Indeed, one of the functions of the government, through the Judiciary, is the administration of justice within its territorial jurisdiction. Justice Pizarro, as a magistrate of the CA, is clearly a government official directly involved in the administration of justice; and in the performance of such function, he exercises discretion.

OFFICE OF THE COURT ADMINISTRATOR, *Complainant,* -versus- WALTER INOCENCIO V. ARREZA, Judge, Municipal Trial Court, Pitogo, Quezon, *Respondent.*
A.M. No. MTJ-18-1911, FIRST DIVISION, April 16, 2018, DEL CASTILLO, *J.*

Under Section5, Canon 6 on the New Code of Judicial Conduct for the Philippine Judiciary, it states that judges shall perform all duties, including the delivery of reserved decisions, efficiently, fairly, and with reasonable promptness. Furthermore, as frontline officials of the Judiciary, trial court judges should at all times act with dedication, efficiency, and a high sense of duty and responsibility as the delay in the disposition of cases undermines the public's faith in the judiciary.

In the present case, Judge Arreza is guilty of gross inefficiency for his undue delay in rendering decisions and failure to act on cases with dispatch.

FACTS:

A judicial audit was conducted in Regional Trial Court, Gumaca, Quezon, Branches 61 and 62, and all the Municipal Trial Court/Municipal Circuit Trial Courts under the said RTC's jurisdiction. The judicial audit was from September 19, 2016 to October 1, 2016. The results, particularly with respect to the MTC, Pitogo, Quezon presided by Judge Walter Inoncencio V. Arreza, showed that there were numerous undecided cases which has been overdue for several years. Deputy Court Administrator Raul B. Villanueva issued a memorandum to Judge Arreza ordering him to explain why he should not be sanctioned for his gross inefficiency and undue delay in deciding cases. In his Compliance, Judge Arreza narrated the circumstances which he claimed led to his failure to act on and decide cases. He claimed that he and his wife were having marital problems and his wife decided to leave him and his children. He also added that in December 2012, he suffered a stroke in which he was hospitalized for two weeks and almost became paralyzed. Those events took a toll on his performance as a judge.

However, the OCA recommended that Judge Arreza be held liable for gross inefficiency and undue delay in deciding cases. In its memorandum, Judge Arreza's explanations were not a valid ground to excuse his failure to discharge his duties. The stroke he suffered happened years ago and he should

not have allowed his court to incur the 23 overdue cases for too long a time. More than half of said cases were in fact submitted for decision even prior to his stroke.

ISSUE:

Whether Judge Arreza is liable for gross inefficiency and undue delay in deciding cases. (YES)

RULING:

Under Section5, Canon 6 on the New Code of Judicial Conduct for the Philippine Judiciary, it states that judges shall perform all duties, including the delivery of reserved decisions, efficiently, fairly, and with reasonable promptness. As frontline officials of the Judiciary, trial court judges should at all times act with dedication, efficiency, and a high sense of duty and responsibility as the delay in the disposition of cases undermines the public's faith in the judiciary. Judge's must decide cases promptly and expeditiously under the time-honored percept that justice delayed is justice denied. Judges' failure to decide cases promptly constitutes gross inefficiency and warrants the imposition of administrative sanctions on them.

In this case, Judge Arreza's problem with his wife happened way back in 2010 and his stroke in 2012. He had more than enough time to catch up before the conduct of the judicial audit in 2016 given the fact that his sala has a manageable case load due to the low average of case inflow which was only one case a month. In addition, there were already cases which were overdue for decision even before he suffered stroke and he failed to file for an extension to decide cases. Judge Arreza has the capability to act on the subject cases, however, he simply did nothing. The delay is Judge Arreza's disposition of cases was the product of his apathy. Judge Arreza is guilty of gross inefficiency for his undue delay in rendering decisions and failure to act on cases with dispatch.

EXTRA EXCEL INTERNATIONAL PHILIPPINES, INC., represented by ATTY. ROMMEL V. OLIVA, *Complainant*, -versus- HON. AFABLE E. CAJIGAL, Presiding Judge, Regional Trial Court, Branch 96, Quezon City, *Respondent*.

A.M. No. RTJ-18-2523, FIRST DIVISION, June 6, 2018, DEL CASTILLO, *J.*

Section 5, Canon 6 of the *New Code of Conduct for the Philippine Judiciary* directs judges to "perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness." Respondent Judge was inefficient in failing to resolve the motion for issuance of a hold departure order despite the lapse of 90 days. Thus, respondent's failure to resolve complainant's motion to issue a hold departure order constitutes gross inefficiency which warrants the imposition of an administrative sanction.

FACTS:

An Information for qualified theft was filed against Ike R. Katipunan, complainant's former Inventory Control Service Assistant. The case was raffled to Branch 96 of the Regional Trial Court of Quezon City with respondent as Presiding Judge. Complainant alleged that, after the filing of the Information, respondent Judge did not set the case for arraignment nor issue a warrant of arrest; instead, he granted the accused's Motion for Preliminary Investigation and Motion to Defer Further Proceedings. The Court of Appeals found grave abuse of discretion on the part of respondent Judge in granting the accused's motion for preliminary investigation. On March 24,

2014, complainant filed a Motion for Issuance of Hold Departure Order, which motion remains unresolved.|||Respondent Judge eventually arraigned the accused on June 9, 2014. However, instead of ordering the accused's commitment, and despite the offense being nonbailable, respondent Judge allowed the accused to go home. On June 13, 2014, the accused filed a Petition for Bail. During the June 30, 2014 bail hearing, respondent Judge declared the Petition for Bail submitted for resolution due to the absence complainant's counsel. On even date, respondent Judge issued an Order granting the bail petition and denying the motion for inhibition.

According to the complainant, the foregoing events clearly showed respondent Judge's gross inefficiency, incompetence, gross ignorance of the law, grave abuse of authority and evident partiality.

ISSUE:

Whether respondent Judge is guilty of gross ignorance of the law, gross inefficiency, grave abuse of authority, and evident partiality. (YES)

RULING:

The Court ruled that the respondent Judge is guilty for gross ignorance of the law, as regards his act of letting the accused go home after the arraignment and the delay in resolving the motion for issuance of a hold departure order despite the lapse of 90 days.

The Order granting the Motion for Preliminary Investigation may not be proper inasmuch as respondent Judge based the Order on accused's bare allegation of non-receipt of notice from the Office of the Prosecutor, we opine that the same did not necessarily amount to gross ignorance of the law. There was no showing that respondent Judge issued the Order because of the promptings of fraud, dishonesty, corruption, malice, ill-will, bad faith or a deliberate intent to do injustice. Indeed, it is axiomatic that not all erroneous acts of judges are subject to disciplinary action.

However, the Court held that respondent Judge did not err in allowing the accused to go home after his arraignment. They are neither persuaded by respondent Judge's claim that there was no reason for him to detain the accused since there was yet no warrant issued for his arrest or that a petition for bail had been filed. Basic is the principle that upon setting a case for arraignment, the accused must have either been in the custody of the law or out on bail. Another basic principle is that the judge must conduct his own personal evaluation of the facts and circumstances which gave rise to the indictment. Needless to say, the failure of respondent Judge to conduct a judicial determination of probable cause under Section 5, Rule 112 of the Rules of Court was exacerbated by his act in allowing the accused to go home (without bail) after arraignment. These acts were indicative of gross ignorance of the law and procedure for which respondent must be called to account.

Lastly, the Court held that the respondent Judge was inefficient in failing to resolve the motion for issuance of a hold departure order despite the lapse of 90 days. Section 5, Canon 6 of the New Code of Conduct for the Philippine Judiciary directs judges to "perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness." Thus, respondent's failure to resolve complainant's motion to issue a hold departure order constitutes gross inefficiency which warrants the imposition of an administrative sanction.

THE OFFICE OF THE COURT ADMINISTRATOR, *Complainant*, -versus- HON. SELMA P. ALARAS, PRESIDING JUDGE, BRANCH 62, REGIONAL TRIAL COURT, MAKATI CITY, *Respondent*.
A.M. No. RTJ-16-2484, THIRD DIVISION, July 23, 2018, BERSAMIN,J.

Gross ignorance of the law is undoubtedly a serious offense, It is the disregard of basic rules and settled jurisprudence. ***A judge may also be administratively liable if shown to have been motivated by bad faith, fraud, dishonesty, or corruption in ignoring, contradicting, or failing to apply settled law and jurisprudence.*** *For liability to attach for ignorance of the law,* ***the assailed order, decision, or actuation of the judge in the performance of official duties must not only be found erroneous*** *but, most importantly,* ***it must also be established that he was moved by bad faith, dishonesty, hatred, and other like motive.***

In this case, Judge Alaras ***did not traverse the standards defined by the Court to be liable for gross ignorance of law.*** *Judge Alaras issued the TRO to be effective "within a period of twenty days from the date hereof or until further orders from this Court. The tenor of the TRO obviously confined its effectivity to the 20-day period provided under Section 5, Rule 58 of the Rules of Court.* ***The additional phrase "until further orders from this Court" was an obvious surplusage and clearly unnecessary.*** *Hence,* ***the TRO cannot be regarded as erroneous.***

FACTS:

Complainants Spouses Cresenciano and Nova Pitogo are the President and Treasurer, respectively, of LSD Construction Corporation (LSDCC). Planters Development Bank (PDB) filed with the RTC of Cebu a petition to extra-judicially foreclose the mortgage executed by complainants in favor of PDB to secure the loan obligation of LSDCC. Pursuant to this petition, a Notice for the Extra-Judicial Foreclosure Sale was issued by the Teofilo Soon Jr. (Sheriff). Complainants filed a Petition praying for the issuance of a Temporary Restraining Order (TRO). **Respondent Judge Selma Alaras** (Judge Alaras) **issued the TRO** and directed PDB and the sheriff **to desist from proceeding with the foreclosure sale "until further orders from this Court".** Judge Alaras recused herself to the case and was re-raffled to the RTC Makati City. The case was set for a status conference.

However, before the status conference, a second Notice for the Extra-Judicial Foreclosure Sale was issued by the sheriff. When questioned about the notice, the sheriff replied that he had no knowledge of the status conference and he was to proceed with the auction since there was no order from the trial court to stop the foreclosure sale after the trial court. When he was reminded that he was to wait for further orders from the court, the sheriff insisted that he was just performing a ministerial duty.

An administrative complaint was filed against Judge Alaras for **gross ignorance of law in connection of her issuance of a TRO effective for an indefinite period.** In her comment, Judge Alaras explained that it was plainly indicated that the TRO was valid and effective only for twenty

days. Nevertheless, **the Office of the Court Administrator (OCA) found her guilty of gross ignorance of the law by including the phrase "until further orders from this court" in the TRO she issued.**

ISSUE:

Whether or not respondent judge is guilty of gross ignorance of law (NO)

RULING:

Gross ignorance of the law is undoubtedly a serious offense, It is the disregard of basic rules and settled jurisprudence. **A judge may also be administratively liable if shown to have been motivated by bad faith, fraud, dishonesty, or corruption in ignoring, contradicting, or failing to apply settled law and jurisprudence.** A judge is presumed to have acted with regularity and good faith in the performance of judicial functions but a blatant disregard of the clear and unmistakable provisions of a statute, as well as Supreme Court circulars enjoining their strict compliance, upends this presumption and subjects the magistrate to corresponding administrative sanctions. For liability to attach for ignorance of the law, **the assailed order, decision, or actuation of the judge in the performance of official duties must not only be found erroneous** but, most importantly, **it must also be established that he was moved by bad faith, dishonesty, hatred, and other like motive.**

In this case, Judge Alaras **did not traverse the standards defined by the Court to be liable for gross ignorance of law.** Judge Alaras issued the TRO to be effective "within a period of twenty days from the date hereof or until further orders from this Court. The tenor of the TRO obviously confined its effectivity to the 20-day period provided under Section 5, Rule 58 of the Rules of Court. **The additional phrase "until further orders from this Court" was an obvious surplusage and clearly unnecessary.** Hence, **the TRO cannot be regarded as erroneous.** It was mere oversight on the part of Judge Alaras in light of her setting the application for the writ of preliminary injunction for hearing immediately upon her issuance of the TRO. Such hearing negated the notion that she intended the TRO be effective for an indefinite period.

ANONYMOUS, *complainant* **-versus- JUDGE BILL D. BUYUCAN, MUNICIPAL CIRCUIT TRIAL COURT, BAGABAG-DIADI, NUEVA VIZCAYA,** *respondent.*

AM No. MTJ-16-1879 (Formerly OCA IPI No. 14-2719-MTJ), EN BANC, 24 July 2018, PER CURIAM.

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. In this regard, the Court has consistently admonished any act or omission that would violate the norm of public accountability and diminish the faith of the people in the judiciary.

Judge Buyucan's continued illegal settlement erodes the public's confidence in its agents of justice because such act was an arbitrary deprivation of the DA's ownership rights over the Subject Property. Worse, his continued refusal to vacate instigated the continued illegal occupation of other informal settlers. He is also faulted for 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 received a favorable judgment just a few months before the purported sale.

FACTS:

Under Proclamation No. 573, the Department of Agriculture (DA) acquired a 193-hectare parcel of land located in Bagabag, Nueva Vizcaya for research purposes. As there was a need to clear the subject property of informal settlers residing therein, the DA filed several cases before the MTCC, presided over by Judge Buyucan. Said cases were dismissed by Judge Buyucan.

A few months later, Judge Buyucan acquired from a respondent in his previously dismissed cases a parcel of land within the subject property. He denied knowledge of the DA's ownership over the subject property and instead claimed that the land he occupied was within the road-right-of wat of the DPWH.

The Office of the Court Administrator found Judge Buyucan liable for gross misconduct for his illegal occupation and refusal to vacate the land despite repeated demands from the DA.

ISSUE:

Whether or not Judge Buyucan is liable for gross misconduct. (YES)

RULING:

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. In this regard, the Court has consistently admonished any act or omission that would violate the norm of public accountability and diminish the faith of the people in the judiciary.

Canon 2 of the New Code of Judicial Conduct 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. In this case, Judge Buyucan's continued illegal settlement erodes the public's confidence in its agents of justice because such act was an arbitrary deprivation of the DA's ownership rights over the Subject Property. Worse, his continued refusal to vacate instigated the continued illegal occupation of other informal settlers.

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. Here, Judge Buyucan is faulted for 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 received a favorable judgment just a few months before the purported sale.

OFFICE OF THE COURT ADMINISTRATOR, *Complainant,* -versus- JUDGE LYLIHA AQUINO, Regional Trial Court of Manila, Branch 24, *Respondent.*

A.M. No. RTJ-15-2413, EN BANC, September 25, 2018, Per Curiam

Canon 4 of the New Code of Judicial Conduct states that propriety and the appearance of propriety are essential to the performance of all the activities of a judge, and Section 1 thereof explicitly mandates that judges shall avoid impropriety and the appearance of impropriety in all of their activities. Considering that she was then running for re-election as PJA Secretary-General, it would have done well for Judge Aquino to have been more circumspect in her actions and limited her assistance to providing the necessary information to the PJA members on the available hotel accommodations.

Paragraph two of Rule 137, Section 1 provides for the rule on voluntary inhibition and states that 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. That discretion is a matter of conscience and is addressed primarily to the judge's sense of fairness and justice. Because voluntary inhibition is discretionary, Judge Aquino would have been in the best position to determine whether or not there was a need for her to inhibit from the RII Builders case, and her decision to continue to act on the case should be respected.

FACTS:

The election of Philippine Judges' Association (PJA) officers was held during the annual PJA Convention. Judge Lyliha Aquino (Judge Aquino), Presiding Judge of RTC-Manila, Branch 24, was the PJA Secretary-General running for re-election in 2013. There were three major allegations against Judge Aquino: (1) booking for the accommodations of PJA members at Century Park Hotel for the 2013 PJA Convention, with said accommodations being paid for by only one person; (2) using her close personal ties to then Deputy Court Administrator (DCA) Antonio M. Eugenio, Jr. (Eugenio) to effect her transfer from her original station at RTC-Tuguegarao City, Cagayan, Branch 4 (a Family Court) to RTC-Manila, Branch 24 (a Commercial Court), before which one of the cases of *Arlene Lerma,* a notoriously-alleged fixer in courts, was pending; and (3) winning a Chery car, sponsored by *Arlene*, at a raffle held during the 2009 PJA Convention, but said car turned out to be already registered in Judge Aquino's name months before said raffle. Judge Aquino's case was eventually raffled to Investigating Court of Appeals Justice Associate Justice Jose C. Reyes (Reyes).

As regards the booking of the accommodations, Reyes found that despite Judge Aquino's defense that the booking for the accommodations of PJA members, Judge Aquino should have been more circumspect in her actions especially considering the fact that she was running for reelection at the time. The fact that it has been the practice will not make an act that is improper proper. As regards Judge Aquino's transfer to Manila, Reyes found that the former should have been more cautious in accepting appointment to a Commercial Court especially considering the fact that Arlene Lerma's Case was then pending before the said court. It would have been more prudent if Judge Aquino avoided ruling on a motion where Arlene was a party because their social relationship could reasonably tend to raise suspicion that it was a n element in the determination of Arlene's case. Lastly, as regards the raffle of the Chery Car, Reyes found that Arlene's presence in the PJA events, coupled with the unusual nature of the raffle in 2009 - the prize being a car and the first and only

time that such item was raffled off in PJA- should have alerted Judge Aquino and placed her on guard as to the possible source of the prize.

ISSUE:

1. Whether or not Judge Aquino should be held administratively liable for booking the accommodations of PJA members (YES);
2. Whether or not Judge Aquino should be held administratively liable for using her close personal ties to DCA Eugenio in order to be transferred to the RTC Manila, and thereafter ruled on a motion in favor of Arlene Lerma (NO); and
3. Whether or not Judge Aquino should be held administratively liable for the suspicious acceptance of the Chery Car in the PJA raffle (NO)

RULING:

1. Canon 4 of the New Code of Judicial Conduct states that propriety and the appearance of propriety are essential to the performance of all the activities of a judge, and Section 1 thereof explicitly mandates that judges shall avoid impropriety and the appearance of impropriety in all of their activities. Considering that she was then running for re-election as PJA Secretary-General, it would have done well for Judge Aquino to have been more circumspect in her actions and limited her assistance to providing the necessary information to the PJA members on the available hotel accommodations.

2. Judge Aquino requested for transfer to any court in Metro Manila, and she did not specifically mention RTC-Manila, Branch 24. Judge Aquino's designation as Acting Presiding Judge of RTC-Manila, Branch 24 was officially approved under Administrative Order No. 53-2012 signed by the Chief Justice and the two most senior Associate Justices of the Supreme Court. Both DCA Eugenio and DCA Bahia attested before Investigating Court of Appeals Justice Reyes that there were no existing guidelines for requests for transfer of judges to other stations.

   Paragraph two of Rule 137, Section 1 provides for the rule on voluntary inhibition and states that 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. That discretion is a matter of conscience and is addressed primarily to the judge's sense of fairness and justice. Because voluntary inhibition is discretionary, Judge Aquino would have been in the best position to determine whether or not there was a need for her to inhibit from the *RII Builders case,* and her decision to continue to act on the case should be respected.

3. The Chery car was the grand raffle prize at the PJA Convention in October 2009. It was still unclear whether it was sponsored by then Manila Vice Mayor Francisco Moreno Domagoso, more popularly known as Isko Moreno (Moreno); or by Arlene Lerma; or by Vice Mayor Moreno, through Arlene Lerma. Then Judge Eugenio picked Judge Aquino's name by luck from a *tambiolo* containing 600 or more names of PJA members present at the convention. There was no proof at all of any. irregularity in the raffle of the Chery car at the 2009 PJA Convention, which was conducted in the presence of the raffle committee and all the participating members and guests of PJA.

2.Code of Judicial Conduct

JUDGE DENNIS B. CASTILLA, *Complainant*, -versus- MARIA LUZ A. DUNCANO, CLERK OF COURT IV, OFFICE OF THE CLERK OF COURT, MUNICIPAL TRIAL COURT IN CITIES, BUTUAN, AGUSAN DEL SUR, *Respondent*.
A.M. No. P-05-1938, January 24, 2018, FIRST DIVISION, TIJAM,*J.*

It has been held that the conduct of court personnel, must not only be, but must also be perceived to be, free from any whiff of impropriety, both with respect to their duties in the judiciary and to their behavior outside the court.

In view of Mrs. Duncano's acts, she clearly violated the provision of Sec. 7 (d) of R.A. No. 6713, which reads, in part: "Solicitation or acceptance of gifts. — Public officials and employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value from any person in the course of their official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of their office."

What is material is that from the circumstances of the case, Mrs. Duncano demanded, collected and received from the Lamostes the amount of PhP7,000 purportedly to be applied to Nathaniel's bail bond.

FACTS:

Judge Castilla sent a letter-report to the Supreme Court Deputy Court Administrator reporting alleged infractions committed by Mrs. Duncano amounting to dishonesty, deceit and neglect of duty. In his letter-report, Judge Castilla made the following allegations:

1. When Criminal Case against a certain Nathaniel was still undergoing inquest proceedings, Mrs. Duncano personally and privately but under the pretext of performing her official duties, demanded and collected from them, the amount of PhP7,000 for his bail bond. Although Mrs. Duncano eventually returned the amount to the Lamostes, she first made them beg for the return of said amount and at the same time, gave them false hopes for the release of Nathaniel.

2. Mrs. Duncanodeliberately caused (probably for personal benefit or gain); or allowed (through gross negligence) the loss or continued unavailability of a Supreme Court EPSON Computer Printer.

3. Mrs. Duncano, in her capacity as MTCC Clerk of Court, acted dishonestly, when she submitted a letter-explanation with a job/repair receipt thereto attached, stating that the lost printer was brought to Columbia Computer Shop in Butuan for repair when she actually knew, or should have known, that said receipt was not for the lost printer, but was in fact that of a computer CPU which had long been brought back to MTCC.

The investigating judge found Mrs. Duncano administratively liable for conduct unbecoming of a court employee, and accordingly, recommended that she be meted the penalty of suspension for two months.

ISSUE:

Whether Mrs. Duncano is administratively liable. (YES)

RULING:

Public officers and employees are at all times accountable to the people; must serve them with utmost responsibility, integrity, loyalty and efficiency; and must lead modest lives. [R.A. No. 6713] additionally provides that every public servant shall uphold public interest over his or her personal interest at all times. Court personnel, from the presiding judge to the lowliest clerk, are further required to conduct themselves always beyond reproach, circumscribed with the heavy burden of responsibility as to free them from any suspicion that may taint the good image of the judiciary. Indeed, "(t)he nature and responsibilities of public officers enshrined in the 1987 Constitution and oft-repeated in our case law are not mere rhetorical words. Not to be taken as idealistic sentiments but as working standards and attainable goals that should be matched with actual deeds.

With this principle in mind, The Court finds that Mrs. Duncano has transgressed the established norm of conduct for court employees, and, thus, is administratively guilty of the offense charged.

The following amply established the allegations of the complainant by substantial evidence:

First, the contents of Judge Castilla's letter-report, coupled with the affidavits of Annie, Anniesel and Mrs. Lebios, point to one conclusion, i.e., Mrs. Duncano demanded from Annie and Anniesel the amount of PhP7,000 for Nathaniel's cash bail bond.

In view of Mrs. Duncano's acts, she clearly violated the provision of Sec. 7 (d) of R.A. No. 6713, which reads, in part:

> Section 7. Prohibited Acts and Transactions.
>
> xxx
>
> (d) Solicitation or acceptance of gifts. — **Public officials and employees shall not solicit or accept, directly or indirectly**, any gift, gratuity, favor, entertainment, loan or anything of monetary value from any person in the course of their official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of their office.

As can be gleaned from the prohibition in Sec. 7 (d), it is the commission of that act as defined by the law, and not the character or effect thereof, that determines whether or not the provision has been violated. Therefore, it is immaterial whether Mrs. Duncano received the money directly from the Lamostes or indirectly through Mrs. Lebios; and whether she returned the cash bail bond to the Lamostes. What is material is that from the circumstances of the case, Mrs. Duncano demanded, collected and received from the Lamostes the amount of PhP7,000 purportedly to be applied to Nathaniel's bail bond.

Second, anent the lost EPSON printer, Mrs. Duncano was not able to account for it. What she attached in one of her pleadings is a photo of a printer with serial number DCAV 101692. But this is not the serial number of the printer which is the subject of Judge Castilla's complaint. It has been held that the conduct of court personnel, must not only be, but must also be perceived to be, free from any whiff of impropriety, both with respect to their duties in the judiciary and to their behavior outside the court.This conduct, Mrs. Duncano failed to observe.

OFFICE OF THE COURT ADMINISTRATOR, *Complainant*, -versus- JUDGE HECTOR B. SALISE, PRESIDING JUDGE, BRANCH 7, REGIONAL TRIAL COURT, BAYUGAN CITY, AGUSAN DEL SUR, *Respondent.*

A.M. No. RTJ-18-2514. January 30, 2018, EN BANC,PER CURIAM.

To hold a judge administratively liable for serious misconduct, ignorance of the law or incompetence of official acts in the exercise of judicial functions and duties, it must be shown that his acts were committed with fraud, dishonesty, corruption, malice or ill will, bad faith, or deliberate intent to do an injustice. The Court has repeatedly and consistently held that the judge must not only be impartial but must also appear to be impartial as an added assurance to the parties that his decision will be just. The litigants are entitled to no less than that. They should be sure that when their rights are violated, they can go to a judge who shall give them impartial justice. They must trust the judge; otherwise, they will not go to him at all. They must believe in his sense of fairness; otherwise, they will not seek his judgment. Without such confidence, there would be no point in invoking his action for the justice they expect.

Judge Salise's acts indubitably violated said trust and confidence, seriously impairing the image of the judiciary to which he owes the duty of loyalty and obligation to keep it at all times above reproach and worthy of the people's trust.It was established that he rendered a premature decision in Civil Case No. 1639 (for declaration of nullity of marriage) granting the petition without first ruling on the pending motions filed by the petitioner. He likewise dismissed criminal cases on his own initiative.Judge Salise also dismissed similar cases under highly questionable circumstances and without due regard to the applicable procedural rules.

FACTS:

For Branch 6, RTC, , the judicial audit team found that the court allowed substituted service of summons when, under Section 6 of the Rule on Declaration of Nullity of Void Marriages and Annulment of Voidable Marriages, the modes of service of summons are only: a) personal service or service in person on defendant; and b) service by publication.

In Criminal Case entitled *People v. Peter*, for Qualified Theft, in which no bail was recommended, the court granted the Urgent Petition for Bail without first conducting a hearing to prove that the evidence of guilt against the accused was strong despite the offense charged being a capital offense, in violation of Sections 7 2 and 8, 3 Rule 114 of the Rules of Criminal Procedure.

The manner by which Judge Salise dismissed several cases before this court would suggest impropriety, manifest bias and partiality, grave abuse of discretion, and gross ignorance of the law and procedure. Notably, Judge Salise ordered the dismissal of Criminal Case Nos. 7912, 7999, and 8000 before the scheduled day of arraignment, while Criminal Case No. 8028 was dismissed prior

to the scheduled hearing on the Motion to Suppress Illegally Seized Evidence and without the accused filing a motion for said dismissal.

For Branch 7, RTC, Bayugan City, Judge Salise may be considered to have railroaded the proceedings for a number of cases for declaration of nullity of marriage. In Civil Case No. 1887, Judge Salise rendered a decision granting the petition barely eight (8) months since the case was filed without conducting the mandatory pre-trial, and worse, without petitioner presenting his evidence before the court.

The Office of the Court Administrator (OCA) recommended that Judge Salise be ADJUDGED GUILTY of serious misconduct prejudicial to the integrity and dignity of the judiciary and be DISMISSED from the service.

ISSUE:

Whether Judge Salise is guilty of serious misconduct. (YES)

RULING:
It was established that he rendered a premature decision in Civil Case No. 1639 (for declaration of nullity of marriage) granting the petition without first ruling on the pending motions filed by the petitioner. He likewise dismissed criminal cases on his own initiative, supposedly "for paucity of proof and dearth of evidence," even after he had already determined, expressly or impliedly, that there was probable cause against the accused. He ordered the dismissal of these cases after either the accused had been arraigned or after the cases had been set for arraignment.

Judge Salise also dismissed similar cases under highly questionable circumstances and without due regard to the applicable procedural rules. Judge Salise also never refuted or denied the testimonies of his court personnel affirming his breaches and even saying that litigants and lawyers would frequent his chamber to personally verify their cases. He would call cases, although not included in the court's calendar, "to the point of dismissing" the same. Worse, he was also reported to have issued and signed a Resolution in a case that was not in the court's docket.

The aforementioned circumstances surrounding the proceedings and disposition of cases are far too flagrant to simply be ignored and their totality strongly indicates Judge Salise's corrupt tendencies. His assertions that his procedural lapses were committed in good faith and without any monetary consideration simply do not hold water. The number of cases involved and the manner by which he disposed of said cases clearly show a pattern of misdeeds and a propensity to violate the law and established procedural rules.

To hold a judge administratively liable for serious misconduct, ignorance of the law or incompetence of official acts in the exercise of judicial functions and duties, it must be shown that his acts were committed with fraud, dishonesty, corruption, malice or ill will, bad faith, or deliberate intent to do an injustice. The Court has repeatedly and consistently held that the judge must not only be impartial but must also appear to be impartial as an added assurance to the parties that his decision will be just. The litigants are entitled to no less than that. They should be sure that when their rights are violated, they can go to a judge who shall give them impartial justice. They must trust the judge; otherwise, they will not go to him at all. They must believe in his sense of

fairness; otherwise, they will not seek his judgment. Without such confidence, there would be no point in invoking his action for the justice they expect.

Judge Salise's acts indubitably violated said trust and confidence, seriously impairing the image of the judiciary to which he owes the duty of loyalty and obligation to keep it at all times above reproach and worthy of the people's trust.

Judge Salise violated the Code of Judicial Conduct ordering judges to 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.

OFFICE OF THE COURT ADMINISTRATOR, *Complainant,* -versus- JUDGE WINLOVE M. DUMAYAS, BRANCH 59, REGIONAL TRIAL COURT, MAKATI CITY, *Respondent.*
A.M. No. RTJ-15-2435 (Formerly AM No. 15-08-246-RTC), EN BANC, March 06, 2018, PER CURIAM.

To hold a judge administratively liable for gross misconduct, ignorance of the law, or incompetence of official acts in the exercise of judicial functions and duties, it must be shown that his acts were committed with fraud, dishonesty, corruption, malice or ill-will, bad faith, or deliberate intent to do injustice. In this case, it is clear that JudgeDumayas failed to hear and decide the subject case with the cold neutrality of an impartial judge.

FACTS:

An administrative complaint was filed against Judge WinloveDumayas for allegedly rendering a decision without citing the required factual and legal bases and by ignoring applicable jurisprudence, which constitutes gross misconduct and gross ignorance of the law.

Upon investigation by the OCA, it found that Judge Dumayas imposed a light sentence against an accused in a criminal case when he should have found him guilty of committing murder instead. First, he appreciated the presence of the privileged mitigating circumstance of incomplete self-defense even albeit evidence clearly showed that the unlawful aggression already ceased at the time of the attack. Second, by deliberately not citing any factual or legal bases that the accused voluntarily surrendered, he violated Art. 8, sec. 14 of the Constitution.

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.

ISSUE:

Whether Judge Dumayas can be held administratively liable for the charges against him. (YES)

RULING:

To hold a judge administratively liable for gross misconduct, ignorance of the law, or incompetence of official acts in the exercise of judicial functions and duties, it must be shown that his acts were committed with fraud, dishonesty, corruption, malice or ill-will, bad faith, or deliberate intent to do

injustice. In this case, it is clear that JudgeDumayas failed to hear and decide the subject case with the cold neutrality of an impartial judge.

First, he downgraded the offense charged from murder to homicide. Second, he inappropriately appreciated the privileged mitigating circumstance of self-defense and ordinary mitigating circumstance of voluntary surrender despite the overwhelming evidence to the contrary. Third, he meted out penalties which made the accused eligible for parole.

He is likewise guilty for gross ignorance of the law because his assailed order was not only found to be erroneous, but he was moved by bad faith, hatred, or some other similar motive. He simply used oversight, inadvertence, and honest mistake as convenient excuses.

Lastly, he is guilty of gross misconduct because he implied wrongful intention and not merely an error when he rendered his decision. That a significant number of litigants saw fit to file administrative charges against him, with most cases having the same grounds as stated herein, only shows how poorly he has been performing as a member of the bench.

ROSILANDA M. KEUPPERS, *Complainant*, -versus- JUDGE VIRGILIO G. MURCIA, MUNICIPAL TRIAL COURT IN CITIES, BRANCH 2, ISLAND GARDEN CITY OF SAMAL, *Respondent*.
A.M. No. MTJ-15-1860 (Formerly OCA I.P.I. No. 09-2224-MTJ), EN BANC, April 03, 2018,
BERSAMIN, *J.*

Canon 6, Section 7 of the New Code of Judicial Conduct for the Philippine Judiciary mandates:Judges shall not engage in conduct incompatible with the diligent discharge of judicial duties.

Misconduct consists in the transgression of some established and definite rule of action, or, more particularly, in an unlawful behavior or gross negligence by the public officer. It implies wrongful intention and must not be a mere error of judgment. Respondent Judge was guilty of grave, not simple, misconduct because he had at the very least the willful intent to violate the Family Code on the venue of a marriage solemnized by a judge, and to flagrantly disregard the relevant rules for such solemnization set forth in the law.

The office of solemnizing marriages should not be treated as a casual or trivial matter, or as a business activity. For sure, his act, although not criminal, constituted grave misconduct considering that crimes involving moral turpitude are treated as separate grounds for dismissal under the Administrative Code. It is relevant to observe, moreover, that his acts of grave misconduct and conduct prejudicial to the best interest of the service seriously undermined the faith and confidence of the people in the Judiciary.

FACTS:

This administrative matter commenced from the 1st Indorsement dated November 4, 2009,[1] whereby the Office of the Deputy Ombudsman for Mindanao endorsed to the Office of the Court Administrator (OCA) for appropriate action the complete records of the case initiated by affidavit-complaint by complainant RosilandaManingoKeuppers against respondent Judge Virgilio G. Murcia, the Presiding Judge of the Municipal Trial Court in Cities, Branch 2, in the Island Garden City of Samal, Davao del Norte. She thereby charged respondent Judge with *estafa;* violation of

Republic Act No. 6713; and grave misconduct and conduct prejudicial to the best interest of the service.

According to the complainant, respondent Judge solemnized the marriage on May 19, 2008 in the premises of the DLS Travel and Tours in Davao City; that the staff of the DLS Travel and Tours later on handed to the couple the copy of the marriage certificate for their signatures; that on the following day, May 20, 2008, the couple returned to the DLS Travel and Tours to pick up the documents as promised by Siega; that the couple was surprised to find erroneous entries in the marriage certificate as well as on the application for marriage license, specifically: (a) the certificate stating "Office of the MTCC Judge, Island Garden City of Samal" as the place of the solemnization of the marriage although the marriage had been solemnized in the office of the DLS Travel and Tours in Davao City; (b) the statement in the application for marriage license that she and her husband had applied for the marriage license in Sta. Cruz, Davao City on May 8, 2008 although they had accomplished their application on May 12, 2008 in the office of the DLS Travel and Tours; and (c) the statement in their application for marriage license on having appeared before Mario Tizon, the Civil Registrar of Sta. Cruz, Davao del Sur, which was untrue.

The investigating Justice finds that indeed respondent is guilty of solemnizing a marriage outside of his territorial jurisdiction under circumstances not falling under any of the exceptions as provided for in Article 8 of the Family Code.

ISSUE:

Whether respondent Judge liable for grave misconduct and conduct prejudicial to the best interest of the service. (YES)

RULING:

We hold and find respondent Judge guilty of grave misconduct and conduct prejudicial to the best interest of the service for solemnizing the marriage of the complainant and her husband outside his territorial jurisdiction, and in the office premises of the DLS Tour and Travel in Davao City.

Such place of solemnization was a blatant violation of Article 7 of the *Family Code,* which pertinently provides:

> Art. 7. Marriage may be solemnized by:
>
> (1) Any incumbent member of the judiciary within the court's jurisdiction;

Misconduct consists in the transgression of some established and definite rule of action, or, more particularly, in an unlawful behavior or gross negligence by the public officer. It implies wrongful intention and must not be a mere error of judgment. Respondent Judge was guilty of grave, not simple, misconduct because he had at the very least the willful intent to violate the *Family Code* on the venue of a marriage solemnized by a judge, and to flagrantly disregard the relevant rules for such solemnization set forth in the law. The office of solemnizing marriages should not be treated as a casual or trivial matter, or as a business activity. For sure, his act, although not criminal, constituted grave misconduct considering that crimes involving moral turpitude are treated as separate grounds for dismissal under the *Administrative Code.* It is relevant to observe, moreover,

that his acts of grave misconduct and conduct prejudicial to the best interest of the service seriously undermined the faith and confidence of the people in the Judiciary.

RE: VERIFIED COMPLAINT OF FERNANDO CASTILLO AGAINST ASSOCIATE JUSTICE MARIFLOR PUNZALAN-CASTILLO, COURT OF APPEALS, MANILA.
IPI No. 17-267-CA-J, EN BANC, April 24, 2018, MARITES, *J.*

Unfounded administrative charges against members of the bench degrade the judicial office and greatly interfere with the due performance of their functions in the Judiciary. Hence, parties seeking to disbar members of the bar must prove with clearly preponderant evidence that disbarment is necessary; for mere allegation is not equivalent to proof and charges based on mere suspicion, speculation, or conclusion cannot be given cadence.

In this case, complainant accuses Court of Appeals Associate Justice Punzalan-Castillo of allegedly committing malfeasance or misfeasance, and seeks to have her disbarred and/or removed as justice of the CA.

FACTS:

The complainant in this case is Justice Punzalan-Castillo's brother-in-law, who imputes the following charges against the complainant as bases for his complaint:

(1) That during Justice Punzalan-Castillo's public interview before the JBC in 2016 as an applicant for the position of associate justice, she accused him of falsifying documents; and that she lied when she said that she intended to file falsification charges against him, but until today, no charges were filed against him. Thus, he believed that she is guilty of grave slander in violation of Section 20(f), Rule 138 of the Rules of Court.
(2) That during the same JBC interview, Justice Punzalan-Castillo misrepresented her involvement in the land dispute between complainant and his siblings, he added that she claimed to have no personal involvement in the case because it was her husband's family case, when in fact, she was one of the plaintiffs in the case pending in the RTC-Malolos.
    a. Moreover, she lied when she said that efforts to resolve the case pending among the Castillo siblings were already futile in view of him rejecting any compromise, when in fact, it was Justice Punzalan-Castillo who did not want to amicably settle.
    b. Hence, she committed perjury and violated Rule 2.03, Canon 2 of the Code of Judicial Conduct (Code).
(3) That some pleadings submitted before the RTC-Malolos has originated from the CA, and that the same were drafted, prepared, and finalized by Justice Punzalan-Castillo using CA personnel and facilities. Taking advantage of her position as associate justice of the CA, she violated Rule 1.01, Canon 1 of the Code.
(4) That she failed to inhibit herself in the petition for certiorari filed before the CA by BangkoSentral ng Pilipinas. According to him, she should have inhibited herself because her husband and Delos Angeles' group were partners in the Rural Bank of Calumpit. In his accord, this was a violation of Rule 3.12, Canon 3 of the Code.
(5) That she used a certain AtanacioPaulino in a scheme enabling him to acquire 57 parcels of land in Bulacan. This was done so by the justice and her husband, in connivance with each other, via securing the services of Atty. Rolando Ty to make it appear that Atty. Ty was Paulino's counsel. Complainant surmised that the irregularities Justice Punzalan-Castillo committed constituted grave misconduct.

(6) That she falsified pleadings filed before the RTC-Malolos, because the entries in Paulino's answer and verification were fictitious. Upon examination by a handwriting expert from the NBI, it was discovered that it was one person who had written the entries in the answer and verification.
(7) Finally, complainant recounted that in 1979, Justice Punzalan-Castillo as a new lawyer and a commissioned notary public of Bulacan, had notarized a real estate mortgage involving properties of his mother and father. In 2011, complainant was able to have a copy of said document from the National Archives of the Philippines. However, he noticed that Justice Punzalan-Castillo's name appeared to have been mysteriously erased. In addition, the signature on the real estate mortgage did not match the specimen provided. Hence, she committed forgery in notarizing a deed of mortgage executed by complainant's mother.

Complainant seeks to have Justice Punzalan-Castillo disbarred and/or removed as justice of the appellate court.

Defense of Justice Punzalan-Castillo

Justice Punzalan-Castillo argued that the allegations against her were malicious and baseless. She explained that after the death of the Castillo sibling's father, complainant was able to fraudulently transfer to his name the titles of 67 lots. The siblings decided to settle the case among the family privately, but due to complainant's unreasonable demands, the other siblings decided to file a case for declaration of nullity of title against complainant. Further, referring to and in connection with the enumerated allegations above:

(1) The only reason why no criminal charges were filed against him was because his siblings were hesitant to file criminal charges against their own brother.
(2) She did not lie under oath in stating that complainant was not amenable to a compromise, because they already grew tired of trying to compromise with an unreasonable person- the complainant.
(3) She did utilize CA employees and facilities in preparing the pleadings, but she merely copied the template from one of her employees, she used it as mere reference and for sheer convenience.
(4) When the case was assigned to her division, the name Delos Angeles did not appear in the pleadings. Had she known, she would have inhibited. She was likewise a victim of Delos Angeles' scams.
(5) She denied that se cunningly had Atty. Ty represent Paulino without the latter's consent. PAO already dismissed the administrative complaint against Atty. Ty for being misleading and based on conjectures.
(6) While it may be true that only one person had written the entries in the answer and verification, the fact remains that the information indicated were genuine. The handwriting examination is rather doubtful because it was unclear whether said expert studied the original documents.
(7) The conclusion made by the complainant was unreliable because only photocopies of the documents were used. More so, both her sister and fathers-in-law admitted that they signed the real estate mortgage together with her mother-in-law.

ISSUE:

Whether Justice Punzalan-Castillo is guilty of the allegations complained of. (NO)

RULING:

The Court does not take lightly accusations or imputation of wrongdoing against members of the judiciary, especially magistrates of the appellate court. As a rule, people seeking to disbar members of the bar must prove with clearly preponderant evidence that disbarment is necessary due to the gravity of said punishment.

It is settled that lawyers enjoy the legal presumption that they are innocent of charges against them until proven otherwise. In the present case, complainant must have presented sufficient and concrete evidence to substantiate his accusations against Justice Punzalan-Castillo.

The complainant (1) mistakenly imputed that Justice Punzalan-Castillo lied when she said she intended to file falsification charges against him; (2) complainant misunderstood Justice Punzalan-Castillo participation in the civil case against him; (3) the accusation that Justice Punzalan-Castillo took advantage of her position to utilized CA personnel to draft pleadings were all based on conjectures and speculations, and were hastily concluded; (4) with respect to the accusation that she failed to inhibit herself, the same is groundless and devoid of proof; (5) with regard to the allegation that she procured services of Atty. Ty, the administrative complaint against him was already dismissed for being baseless and premised on misleading conjectures; (6) the fact that the same person had written the entries in a document does not contradict its genuineness, and that the NBI expert merely concluded that a single person had made the entries but did not name Justice Punzalan-Castilloas the author; and (7) the complainant's own father and sister both attested that they jointly executed the real estate mortgage with their mother, thus his claim that her mother's signature was forged is negated.

The case was dismissed for lack of merit.

PHILIP SEE, *Complainant*, -versus- JUDGE ROLANDO G. MISLANG, Presiding Judge, Regional Trial Court, Branch 167, Pasig City, *Respondent*.
A.M. No. RTJ-16-2454, SECOND DIVISION, June 6, 2018, CARPIO, *J.*

Respondent's action finds basis in Administrative Circular No. 10-2000, enjoining judges "to observe utmost caution, prudence and judiciousness in the issuance of writs of execution to satisfy money judgments against government agencies and local government units." When respondent granted complainant's application for preliminary attachment on 5 June 2012, Bautista was not yet paid the contract price of the medical procurement contract. Hence, far from committing gross misconduct and gross ignorance of the law, respondent justifiably lifted the Writ of Preliminary Attachment considering the prematurity of the application for provisional relief.

FACTS:

The Armed Forces of the Philippines (AFP) awarded a medical procurement contract to One Top System Resources, a sole proprietorship owned by Ruth D. Bautista (Bautista). As payment, an irrevocable letter of credit was issued by United Coconut Planters Bank (UCPB). Bautista and complainant entered into a Deed of Assignment whereby Bautista assigned to complainant the amount of PhP2.6 Million from the proceeds of the letter of credit. Bautista issued two postdated checks on favor of the complainant however both were dishonored due to insufficient funds.

Seeking payment with damages, complainant filed with the Regional Trial Court of Pasig City a Verified Complaint with Prayer for Preliminary Attachment on 28 May 2012. Respondent in the said case filed a Motion to Quash which was set for hearing on 10 May 2013. Despite notice, complainant failed to appear. During the hearing, complainant was directed to file his comment or opposition to the motion within a period of five days. Not having received any pleading from complainant, respondent issued an Order dated 22 May 2013, granting the Motion to Quash on the ground that the funds sought to be garnished were still public funds in the absence of a certificate of final acceptance from the AFP. On 24 May 2013, complainant received a copy of the Order granting the Motion to Quash. Alleging that he was not left with any effective remedy, complainant no longer filed a motion for reconsideration nor pursued any judicial remedy. Instead, complainant instituted an administrative proceeding against respondent.

An administrative complaint was then filed by Philip See. Respondent is being charged with dishonesty, gross misconduct, and gross ignorance of the law when he lifted, upon motion, the attachment of the assets of the defendant, without awaiting the comment of complainant, the plaintiff in the civil action.

In its Evaluation, the Office of the Court Administrator (OCA) found respondent to have violated Canon 2 of the Code of Judicial Conduct, mandating a judge to avoid impropriety and the appearance of impropriety in all activities.

ISSUE:

Whether respondent Judge is guilty of dishonesty, gross misconduct, and gross ignorance of the law. (NO)

RULING:

When respondent granted complainant's application for preliminary attachment on 5 June 2012, Bautista was not yet paid the contract price of the medical procurement contract. In fact, AFP paid Bautista almost a year later when the contract price was deposited in the UCPB account of Bautista on 22 May 2013. Significantly, the third whereas clause of the Deed of Assignment between complainant and Bautista stipulates that the amount of PhP2.6 Million due complainant can only be drawn against the letter of credit issued to Bautista "upon presentation of documents from the AFP." This stipulation must be read in relation to Section 11.2 (b) (g) of the Special Conditions of the Contract Agreement *[sic]*, to wit: "[p]ayment shall be made to [One Top System Resources] at the time of the final acceptance of the goods by the [AFP] x xx, and submission or presentation of x xx [the] Certificate of Final Acceptance by the AFP Technical Inspection and Acceptance Committee (TIAC)." In other words, **respondent prematurely granted the application for preliminary attachment** and the AFP rightfully opposed the garnishment of Bautista's receivable in its possession because the alleged earmarked money still constituted public funds at the time.|

Respondent's action finds basis in Administrative Circular No. 10-2000, enjoining judges "to observe utmost caution, prudence and judiciousness in the issuance of writs of execution to satisfy money judgments against government agencies and local government units." The Court issued the administrative circular precisely to prevent the circumvention of Presidential Decree

No. (PD) 1445, vesting the Commission on Audit (COA) with the primary jurisdiction to examine, audit and settle all claims against the Government or any of its subdivisions, agencies and instrumentalities. By initially allowing the garnishment, respondent indirectly adjudicated a monetary claim against the AFP, which power to adjudicate is primarily vested in the COA under PD 1445. Hence, far from committing gross misconduct and gross ignorance of the law, respondent justifiably lifted the Writ of Preliminary Attachment considering the prematurity of the application for provisional relief.

ATTY. MAKILITO B. MAHINAY, *Complainant,* -versus- HON. RAMON B. DAOMILAS, JR., Presiding Judge, and ATTY. ROSADEY E. FAELNAR-BINONGO, Clerk of Court V, both of Branch 11, Regional Trial Court, Cebu City, Cebu, *Respondents*.
A.M. No. RTJ-18-2527, SECOND DIVISION,June 18, 2018, CAGUIOA, *J.*

Undue delay in the disposition of cases and motions erodes the faith and confidence of the people in the judiciary and unnecessarily blemishes its stature. This is more so the case with trial judges who serve as the frontline officials of the judiciary expected to act all time with efficiency and probity. The November 6, 2015 Order was rendered beyond the ninety (90)-day period within which a judge should decide a case or resolve a pending matter, reckoned from the date of the filing of the last pleading, in accordance with Section 15, paragraphs (1) and (2), Article 8 of the 1987 Constitution.

FACTS:

Atty. Makilito B. Mahinay (Atty. Mahinay) was the counsel of the plaintiffs who filed their complaint for Judicial Declaration of Nullity of Shareholdings with Prayer for Issuance of a Writ of Preliminary Injunction and Temporary Restraining Order on December 19, 2012. The subject case was raffled to RTC Branch 11, presided by respondent Judge Daomilas, Jr. Atty. Mahinay asserted that respondent Judge Daomilas, Jr. violated the Interim Rules of Procedure for Intra-Corporate Controversies when he failed to act on the Prayer for TRO and/or a Writ of Preliminary Injunction despite the lapse of more than two (2) years from the date the matter was submitted for resolution sometime in March 2013. On November 6, 2015, respondent Judge Daomilas, Jr. issued an order granting plaintiffs' prayer for a Writ of Preliminary Injunction conditioned upon plaintiffs' posting of a bond. On November 12, 2015, the defendants sought to reconsider said Order, and the court subsequently set the hearing for the same on November 13, 2015.

In his comment to the OCA's 1st Indorsement, respondent Judge Daomilas, Jr. argued denied deliberately delaying the resolution of plaintiffs' prayer for TRO and the Writ of Preliminary Injunction and admitted that he had very limited time to study and evaluate cases and motions for decision due to the voluminous number of cases he hears in the morning and in the afternoon, as well as the fact that he concurrent to his regular branch, he was previously assigned to the RTC in Toledo City, in LapuLapu City and in Mandaue City.

The OCA Recommended that respondent Judge Daomilas, Jr. be found guilty of undue delay in rendering an Order because the Order dated November 6, 2015 was rendered beyond the mandatory ninety (90)-day period within which a judge should decide a case or resolve a pending matter, reckoned from the date of the filing of the last pleading, in accordance with Section 15, paragraphs (1) and (2), Article 8 of the 1987 Constitution.

ISSUE:

Whether respondent Judge Daomilas, Jr. is guilty of undue delay in rendering an order. (YES)

RULING:

Respondent Judge Daomilas, Jr. acted inefficiently in handling the case. Undue delay in the disposition of cases and motions erodes the faith and confidence of the people in the judiciary and

unnecessarily blemishes its stature. This is more so the case with trial judges who serve as the frontline officials of the judiciary expected to act all time with efficiency and probity. The November 6, 2015 Order was rendered beyond the ninety (90)-day period within which a judge should decide a case or resolve a pending matter, reckoned from the date of the filing of the last pleading, in accordance with Section 15, paragraphs (1) and (2), Article 8 of the 1987 Constitution. He should be reminded that that the moment he dons the judicial robe, he is bound to strictly adhere to and faithfully comply with his duties delineated under the New Code of Judicial Conduct for the Philippine Judiciary, particularly Section 5, Canon 6 which mandates judges to perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness. Respondent Judge Daomilas, Jr. is entitled to have his liability mitigated considering the fact that he manages 2 court stations at the same time, with a limited number of personnel.

PROSECUTOR LEO T. CAHANAP, *Complainant*, -versus- JUDGE LEONOR S. QUIÑONES, RTC, Branch 6, Iligan City, Lanao del Norte, *Respondent*.
A.M. No. RTJ-16-2470, EN BANC, January 10, 2018, CAGUIOA, *J.*

Judges are enjoined 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.The OCA aptly found that the testimonies of the prosecutors and the court staff unquestionably proved that respondent 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.

In relation to Rule 3.04, Canon 3 of the Code of Judicial Conduct provides that judges must always be courteous and patient with lawyers, litigants and witnesses appearing in his/her court.The Court is convinced that respondent Judge is guilty of Oppression as shown in several incidents of misbehavior by respondent Judge.

FACTS:

Complainant filed the instant administrative complaint charging respondent with Gross Ignorance of the Law, Gross Misconduct and violation of the Code of Judicial Conduct for the following alleged acts of respondent Judge:

First, Complainant alleged that in his last two (2) years as a prosecutor, he suffered unbearable and intolerable oppression in the hands of respondent Judge.

In the case of *People v. Inot*, respondent got angry and objected to the leading questions asked during complainant's re-direct examination, notwithstanding the fact that no objections were raised by the defense counsel.

In the case of *People v. Badelles*, respondent issued an order blaming complainant for the failure of the forensic chemist to bring the chemistry reports because complainant did not sufficiently specify the chemistry reports due to the court. In the same case, respondent gave complainant a lecture on the proper demeanor and conduct in court while he was making a formal offer of a testimony.

Complainant asserted that the prosecutors, who previously appeared before respondent, 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.

Second, Complainant further accused respondent of habitual tardiness.

Third, in the proceedings for the case of *People v. Heck* (Heck Case), respondent, 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.

Fourth, in the case of *People v. Macapato*, respondent issued an Order directing the release of accused Dimaampao's 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.

Fifth, in the case of *People v. Tingcang*, respondent dismissed the case provisionally without prejudice to its refiling upon the availability of the prosecution's witnesses on the ground of speedy trial.

Sixth, in the case of *People v. Casido*, respondent 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 an information for Attempted Murder.

Seventh and lastly, complainant averred that respondent Judge also mistreated her court staff. Respondent allegedly shouted at a court stenographer and called her *"bogo"* which meant dumb.

Respondent Judge berated another stenographer and shouted at the latter *"punyeta ka"* and *"buwisit ka."*

ISSUE:

Whether respondent should be held administratively liable. (YES)

RULING:

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, Circular No. 13, and Administrative Circular No. 3-99 to reiterate the trial judges' mandate to exercise punctuality in the performance of their duties. Administrative Circular No. 3-99 entitled, *"Strict Observance of Session Hours of Trial Courts and Effective Management of Cases to Ensure Their Speedy Disposition,"* reiterates the mandate for trial judges 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.

The OCA aptly found that the testimonies of the prosecutors and the court staff unquestionably proved that respondent 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.

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.

In relation to Rule 3.04, Canon 3 of the Code of Judicial Conduct provides that judges must always be courteous and patient with lawyers, litigants and witnesses appearing in his/her court.

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."

In view of the foregoing, the Court declared respondent guilty of (1) Oppression (gross misconduct constituting violations of the Code of Judicial Conduct) and (2) Habitual Tardiness.

LUCIO L. YU, JR., complainant, vs. PRESIDING JUDGE JESUS B. MUPAS, Regional Trial Court, Branch 112, Pasay City, respondent

A.M. No. RTJ-17-2491, July 4, 2018, SECOND DIVISION, Caguioa J.

FACTS:

In the subject case, which was raffled to RTC Pasay City, Branch 112, presided by Judge Mupas, GSIS filed a Complaint for Collection of Sum of Money and Damages with Prayer for Preliminary Attachment, against Felix D. Mendoza (Mendoza) in connection with the latter's loan obligation which became due and demandable upon his separation from services.

On August 3, 2007, Judge Mupas issued an Order granting GSIS' prayer for the issuance of a Writ of Preliminary Attachment|.

Consequently, Mendoza filed an Omnibus Motion, with the belated Answer attached thereto.

On February 4, 2009, Judge Mupas issued an Order granting Mendoza's Omnibus Motion and dismissing the subject case, in contradiction to his September 5, 2008 Order|.

Aggrieved, GSIS, through complainant Yu, Jr., commenced the instant administrative proceeding alleging that Judge Mupas grossly ignored the rules when he suddenly disregarded his September 5, 2008 Order. Complainant claims that the appropriate action Judge Mupas should have taken was to issue an order setting aside the order in default, pursuant to Section 3 (b), Rule 9 of the Rules of Court; that Judge Mupas' unfamiliarity with the Rules of Court is a sign of incompetence; and that to not be aware of basic and elementary law constitutes gross ignorance thereof**.**

Complainant further claims that Judge Mupas' conclusion that GSIS was not remiss in its duty to prosecute the action had no factual and legal bases because had Judge Mupas diligently reviewed the case instead of arbitrarily dismissing it, he would have been apprised that GSIS was earnest in prosecuting its cause of action against Mendoza.

The OCA found that Judge Mupas ignored the elementary rules of procedure on setting aside an order of default under Section 3 (b), Rule 9 and the procedure when affirmative defenses are pleaded in the Answer pursuant to Section 6, Rule 16 of the Rules of Court. The OCA opined that instead of hastily dismissing the case, JudgeMupas, following the aforesaid provisions, should have issued an order lifting the order of default, admitting the Answer, and setting the case for trial or preliminary hearing to thresh out the litigious issue of whether or not the alleged surrender of the subject vehicle would be deemed sufficient payment of Mendoza's loan obligation.|||

ISSUES: W/N Judge Mupas is guilty of gross ignorance of the law

RULING

The Court hereby adopts the above well-reasoned OCA recommendation finding Judge Mupas guilty of gross ignorance of the law.

In *Re: Anonymous Letter Dated August 12, 2010, complaining against Judge Ofelia T. Pinto, Regional Trial Court, Branch 60, Angeles City, Pampanga*, the Court ruled that*:*

xxx xxxxxx

> **We have previously held that when a law or a rule is basic, judges owe it to their office to simply apply the law. "Anything less is gross ignorance of the law."** There is gross ignorance of the law when an error committed by the judge was "gross or patent, deliberate or malicious." It may also be committed when ajudge ignores, contradicts or fails to apply settled law and jurisprudence because of bad faith, fraud, dishonesty or corruption.

Here, Judge Mupas hastily dismissed the subject case without regard to the basic rules of procedure and the circumstances evident on records.

To recall, the assailed February 4, 2009 Order dismissed the subject case pursuant to Section 1 (h), Rule 16 and Section 3, Rule 17 of the Rules of Court. However, Section 2, Rule 16 plainly provides that a dismissal of the case pursuant thereto requires a hearing, wherein "the parties shall submit their arguments on the question of law and their evidence on the questions of fact involved" in the case. Only after the requisite hearing may the court dismiss the action or claim. Instead of conducting a preliminary hearing, Judge Mupas dismissed the subject case based on Mendoza's mere allegation that his loan obligation has been fully satisfied.

In *Bautista v. Causapin, Jr.*, the Court categorically ruled that the failure of Judge Causapin to conduct a preliminary hearing on the motion to dismiss the complaint under Rule 16, amounts to gross ignorance of law which makes a judge subject to disciplinary action:

> **Where the law involved is simple and elementary, lack of conversance therewith constitutes gross ignorance of the law.** Judges are expected to exhibit more than just cursory acquaintance with statutes and procedural laws. They must know the laws and apply them properly in all good faith. Judicial competence requires no less. **The mistake committed by respondent Judge is not a mere error of judgment that can be brushed aside for being minor. The disregard of established rule of law which amounts to gross ignorance of the law makes a judge subject to disciplinary action**.

Moreover, as correctly noted by the OCA, records of the case negate dismissal under Section 3, Rule 17, because GSIS was never remiss in its duty to prosecute the case. In fact, GSIS earnestly availed itself of all legal remedies available and proceeded to present its evidence *ex parte* upon the order of Judge Mupas.

Verily, for carelessly dismissing the subject case in utter disregard of elementary rules of procedure, Judge Mupas acted in gross ignorance of the law. Under Rule 140 of the Rules of Court as amended by A.M. No. 01-8-10-SC, gross ignorance of the law or procedure is a serious charge with a penalty ranging from a fine of more than P20,000.00 but not exceeding P40,000.00 to dismissal.

OFFICE OF THE COURT ADMINISTRATOR, *complainant*, *vs.* JUDGE JULIANA ADALIM-WHITE, Regional Trial Court, Branch 5, Oras, Eastern Samar, *respondent*.

A.M. No. RTJ-15-2440, EN BANC, September 4, 2018, PER CURIAM

The Court has previously held that when a law or rule is basic, judges owe it to their office to simply apply the law. Anything less is ignorance of the law. There is gross ignorance of the law when an error committed by the judge was "gross or patent, deliberate or malicious." It may also be committed when a judge ignores, contradicts or fails to apply settled law and jurisprudence because of bad faith, fraud, dishonesty or corruption. Gross ignorance of the law or incompetence cannot be excused by a claim of good faith. In this case, respondent Adalim-White's utter disregard to apply the settled laws and jurisprudence on the accomplishment of PDS forms constitutes gross ignorance of the law which merits administrative sanction.

FACTS:

An administrative complaint for misconduct was filed by Mr. Lim against respondent Judge Adalim-White, or prior to her appointment as judge, for acting as counsel for her brother, Francisco Adalim, in connection with an administrative case filed against the latter. Mr. Lim's complaint was grounded on the prohibition against respondent Judge Adalim-White, being then a PAO lawyer, from engaging in private practice or from acting as counsel for immediate members of her family and relatives within the 4th civil degree of consanguinity or affinity without the necessary approval therefor. Because of this, respondent was suspended for a month. Subsequently, the OCA recommended that the enforcement of the penalty of the one (1) month suspension should be held in abeyance because

the OCA had uncovered another infraction committed by respondent Judge Adalim-White in connection with her case before the Office of the Ombudsman. According to the OCA, respondent Judge Adalim-White's Personal Data Sheet (PDS) accomplished on February 9, 2004 (when she first assumed the position of RTC Judge) revealed that she had failed to disclose that an administrative case had been filed against her and that she had, in fact, been penalized therefor.

ISSUE:

Whether or not respondent is guilty of gross ignorance of the law (YES)

RULING:

The importance of accomplishing a PDS with utmost honesty cannot be stressed enough. The accomplishment of a PDS is a requirement under the Civil Service Rules and Regulations in connection with employment in the government. The making of untruthful statements therein is, therefore, connected with such employment. As such, making a false statement therein amounts to dishonesty and falsification of an official document. Dishonesty and falsification are considered grave offenses.

Even granting that respondent Judge Adalim-White had been motivated by good intentions leading her to disregard the laws governing PDS forms, these personal motivations cannot relieve her from the administrative consequences of her actions as they affect her competency and conduct as a judge in the discharge of her official functions. The Court has previously held that when a law or rule is basic, judges owe it to their office to simply apply the law. Anything less is ignorance of the law. There is gross ignorance of the law when an error committed by the judge was "gross or patent, deliberate or malicious." It may also be committed when a judge ignores, contradicts or fails to apply settled law and jurisprudence because of bad faith, fraud, dishonesty or corruption. Gross ignorance of the law or incompetence cannot be excused by a claim of good faith.

In this case, respondent Adalim-White's utter disregard to apply the settled laws and jurisprudence on the accomplishment of PDS forms constitutes gross ignorance of the law which merits administrative sanction.

ATTY. MELVIN M. MIRANDA, ***Complainant*, *-versus-* PRESIDING JUDGE WILFREDO G. OCA, MUNICIPAL TRIAL COURT, REAL, QUEZON (FORMER ACTING PRESIDING JUDGE, METROPOLITAN TRIAL COURT, BRANCH 71, PASIG CITY)**, ***Respondent.***
A.M. No. MTJ-17-1899, SECOND DIVISION, March 07, 2018, CAGUIOA, *J.*

The JAR does not require the inclusion of the offer or statement of the purpose of the witness' testimony nor does it impose a fine on a party for failure to include the same. The OCA noted that the contents of a judicial affidavit are those listed under Section 3 of the JAR, while Section 6 thereof provides that the party presenting the witness' judicial affidavit in place of direct testimony shall state the purpose of the same at the start of the presentation of the witness.

FACTS:

Atty. Miranda alleged that when he was about to present private complainant, Antonio L. Villaseñor, together with his Judicial Affidavit, and began to state the purpose of the witness' testimony

pursuant to Section 6 of the Judicial Affidavit Rule (JAR), Judge Oca told Atty. Miranda that there was "no need for that" and then directed the defense counsel, Atty. Ma. Antonieta B. Albano-Placides to proceed to cross-examination. Atty. Miranda asked that he be allowed to state the purpose of his witness' testimony but Judge Oca asked Atty. Miranda if he included the offer or statement of the purpose of the witness' testimony in the Judicial Affidavit. Atty. Miranda replied in the negative then Judge Oca asked Atty. Placides to say something about the matter. Atty. Placides said that Atty. Miranda violated the JAR for filing the Judicial Affidavit only on October 14, 2013. Judge Oca then ordered the termination of the proceedings and told Atty. Miranda that he should have included the offer or statement of the purpose of the witness' testimony in the Judicial Affidavit. Moreover, Judge Oca ordered Atty. Miranda to pay a fine of P1,000.00, and he set the next hearing on February 12, 2014, which is 4 months thereafter. Atty. Miranda made an oral motion for reconsideration, asserting that the JAR does not require the inclusion of the offer or statement of the purpose of the witness' testimony in the judicial affidavit and thus there is no basis for the termination of the proceedings and the imposition of the fine. However, Judge Oca denied outright the said oral motion, excused the witness, and adjourned the proceedings.

ISSUE:

Whether the Supreme Court should adopt the recommendation of the Office of Court Administration (OCA). (YES)

RULING:

The OCA agreed with Atty. Miranda's assertion that the JAR does not require the inclusion of the offer or statement of the purpose of the witness' testimony nor does it impose a fine on a party for failure to include the same. The OCA noted that the contents of a judicial affidavit are those listed under Section 3 of the JAR, while Section 6 thereof provides that the party presenting the witness' judicial affidavit in place of direct testimony shall state the purpose of the same at the start of the presentation of the witness. Moreover, the OCA stressed that the fine under Section 10 of the JAR is only imposable in the following instances: (a) the court allows the late submission of a party's judicial affidavit; and (b) when the judicial affidavit fails to conform to the content requirements under Section 3 and the attestation requirement under Section 4.

B. Disqualifications of judicial officers (Rule 137)

1. **Compulsory**
2. **Voluntary**

C. Administrative jurisdiction of the Supreme Court over Judges and Justices (all levels)

EDGAR A. ABIOG, Court Stenographer I, Municipal Circuit Trial Court, Brooke's Point-Española, Bataraza, Palawan, *Complainant,* -versus – HON. EVELYN C. CAÑETE, Presiding Judge, *Respondent.*

A.C. No. MTJ-18-1917, FIRST DIVISION, October 8, 2018, DEL CASTILLO, *J.*

*In a number of cases, this Court has consistently reminded government officials that the Halls of Justice must strictly be used for **official functions only**, in accordance with **Administrative Circular No. 3-92**, which partly states:*

> *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.*

It appears that the local government could not afford to grant her the usual RATA; in lieu thereof, the local executive agreed to provide free quarters to respondent judge at the local government's expense. ***Propriety demands that respondent judge should have refused the offer; she ought to have exhibited enough good sense to decline it especially since the provision of a residential quarters is not among her privileges as a judge****.*

FACTS:

Complainant charged respondent judge with serious misconduct, dishonesty, conduct unbecoming of a judge, and conduct prejudicial to the best interest of service committed. He alleged that in August 2011 and subsequently thereafter up to this day, Presiding Judge Evelyn Cañete stayed and resided at her chamber and constructed an extension of her chamber which was utilized as her living and residential quarter, and from time to time her families' and her visitors' living and residential quarter with the Municipal Government paying their electric bills and water bills.

Respondent judge denied the charges against her. She averred that there was no such extension to her chambers; that the living quarters referred to by complainant was actually occupied at one time by the public prosecutor, public attorney, and the clerk of court; that when the premises were vacated, the municipal government had it repaired "as a way of thanking [her] for the contribution that [she] made in the community;" that she gave up the apartment she was renting upon her designation as Assisting Judge in Puerto Princesa City in September 2012 and transferred to the "living quarters assigned to [her] by the Municipal Government"; that since she normally rendered overtime work, it was "very convenient and safe for [her] to stay at the quarters".

The Office of the Court Administrator (OCA) found substantial evidence to hold respondent judge guilty of improper conduct. OCA recommended that respondent judge be found guilty.

ISSUE:

Whether respondent judge should be held administratively liable. (YES)

RULING:

In a number of cases, this Court has consistently reminded government officials that the Halls of Justice must strictly be used for **official functions only**, in accordance with **Administrative Circular No. 3-92**, which partly states:

> 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.

Moreover, the justifications proffered by respondent judge fail to persuade. For one, it is irrelevant whether or not the living quarters she occupied was an extension of her chambers; the fact remains that the same was inside and part of the Halls of Justice.

Also, her denial of having solicited from the local government the provision of a living quarters does not deserve credence. According to Atty. Mary Jean D. Feliciano, Municipal Mayor of Brooke's Point, Palawan, in her July 23, 2015 letter addressed to complainant:

> "a verbal agreement was made between the Local Chief Executive and the Presiding Judge, Hon. Evelyn C. Cañete, that instead of granting the latter an additional Representation Allowance and Transportation Allowance (RATA), the local government gave her the **privilege to use the extension of the said office**, which was constructed by the municipal government, as her **living quarter[s].**"

Respondent judge ought to have known that the local government was not obligated to pay her additional allowance or RATA. She was already properly compensated for her services by the Court. Besides, it appears that the local government could not afford to grant her the usual RATA; in lieu thereof, the local executive agreed to provide free quarters to respondent judge at the local government's expense. **Propriety demands that respondent judge should have refused the offer; she ought to have exhibited enough good sense to decline it especially since the provision of a residential quarters is not among her privileges as a judge**. Neither should respondent judge expect the local government to "compensate" her for services rendered, particularly as regards the speedy disposition of complaints, since this is the very essence of, and expected from, her office. Moreover, the claim that living within the premises of the Halls of Justice provides more convenience, safety and security to respondent judge fails to sway. On the contrary, respondent judge's use of the courthouse as dwelling "brings the court into public contempt and disrepute" "in addition to exposing judicial records to danger of loss or damage." Besides, if we give weight to respondent judge's explanation, then all judges might as well reside within the premises of the Halls of Justice.

Respondent judge must know that there is always a price to pay for tainted offerings, however innocuous or harmless they may appear. And the price is almost always loss of integrity or at the very least, compromised independence. Needless to say, that is a stiff price to pay, especially by a member of the judiciary, whose basic, irreducible qualification, is unimpeachable integrity.

CARLOS GAUDENCIO M. MAÑALAC, *Complainant,* -versus – HON. PEPITO B. GELLADA, Presiding Judge, Branch 53, Regional Trial Court, Bacolod, City, Negros Occidental, *Respondent.*

A.C. No. RTJ-18-2535, FIRST DIVISION, October 8, 2018, DEL CASTILLO, *J.*

In Mercado v. Judge Salcedo (Ret.), this Court found therein respondent judge guilty of gross ignorance of the law when he effectively modified a decision that had attained finality.

> *x x x [W]hen a final judgment becomes executory, it thereby becomes **immutable and unalterable. The judgment may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of***

> ***fact or law**, and regardless of whether the modification is attempted to be made by the Court rendering it or by the highest Court of the land. x x x*

*Of course, there are exceptions to this rule, such as "the correction of clerical errors, or the making of so-called **nunc pro tunc entries**, which cause no prejudice to any party, and [the nullification of a] judgment [that] is void." None of the exceptions obtain in this case, however.*

The March 19, 2015 Order terminating the rehabilitation proceedings became final and executory after Judge Gellada denied MADCI's motion for reconsideration to reverse the same. It, thus, became imperative for Judge Gellada to respect his own final and executory decision in keeping with the basic principle of finality or immutability of judgments.

FACTS:

Medical Associates Diagnostic Center, Inc. (MADCI) obtained a loan from the Development Bank of the Philippines (DBP) secured by a mortgage over a property. MADCI defaulted in its obligations and its loan eventually became past due. Subsequently, DBP transferred to PI One all its rights, title, and interest on the non-performing loan of MADCI.

Meanwhile, MADCI filed an action for corporate rehabilitation which was raffled to RTC Bacolod City Branch 53 presided by Judge Gellada. After due proceedings, the RTC Bacolod City Branch 53 issued on **March 19, 2015** an **Order terminating the rehabilitation proceedings** for failure of MADCI to comply with its obligations under the rehabilitation plan.

Complainant alleged that, notwithstanding the termination of the rehabilitation proceedings, MADCI prayed that it be allowed to revive or reopen the rehabilitation proceedings.

In an Order dated **May 5, 2016**, **Judge Gellada granted MADCI's motion** and ordered MADCI to comply with the provisions of the rehabilitation plan within 15 days; declared null and void the foreclosure and the proceedings taken after such foreclosure; and ordered PI One to restore MADCI in possession of the subject property.

Against this backdrop, PI One charged Judge Gellada with gross ignorance of the law (a) when he issued the May 5, 2016 Order reviving or reopening the rehabilitation proceedings notwithstanding the final and executory nature of the March 19, 2015 Order terminating the rehabilitation proceedings; (b) when he issued the May 5, 2016 Order annulling the foreclosure and subsequent proceedings taken thereafter despite the pendency of a Complaint for Declaration of Nullity of Foreclosure Proceedings before RTC Bacolod City Branch 54; and in immediately restoring MADCI in possession of the subject property despite the RTC Kabankalan City Branch 61 having already previously issued a writ of possession in favor of PI ONE, thereby unduly interfering with the judgments and decrees of co-equal courts; moreover, Judge Gellada granted said reliefs despite their not being prayed for in MADCI's pleadings; and, (c) when he issued the May 13, 2016 Order granting MADCI's motion for execution without hearing or notice to PI ONE.

The Office of the Court Administrator (OCA) found respondent judge guilty of gross ignorance of the law. OCA recommended that he be meted out a fine of PhP20,000.00.

ISSUE:

Whether the respondent Judge Gellada exhibited gross ignorance of the law and procedure in issuing the Order dated May 5, 2016. (YES)

RULING:

We agree with the OCA's finding that respondent judge exhibited gross ignorance of the law and procedure in issuing the Order dated May 5, 2016 as it violated the **principle of immutability of judgment** and the **policy of non-interference over the judgments or processes of a co-equal court.**

In Mercado v. Judge Salcedo (Ret.), this Court found therein respondent judge guilty of gross ignorance of the law when he effectively modified a decision that had attained finality.

> x x x [W]hen a final judgment becomes executory, it thereby becomes **immutable and unalterable. The judgment may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law**, and regardless of whether the modification is attempted to be made by the Court rendering it or by the highest Court of the land. x x x

Of course, there are exceptions to this rule, such as "the correction of clerical errors, or the making of so-called **nunc pro tunc entries**, which cause no prejudice to any party, and [the nullification of a] judgment [that] is void." None of the exceptions obtain in this case, however.

The March 19, 2015 Order terminating the rehabilitation proceedings became final and executory after Judge Gellada denied MADCI's motion for reconsideration to reverse the same. It, thus, became imperative for Judge Gellada to respect his own final and executory decision in keeping with the basic principle of finality or immutability of judgments. "The **doctrine of finality of judgment**, which is grounded on fundamental considerations of public policy and sound practice, dictates that at the risk of occasional error, the judgments of the courts must become final and executory at some definite date set by law." To do otherwise, as what Judge Gellada did by issuing the May 5, 2016 Order, rendered him administratively liable for gross ignorance of the law.

Even if this Court were to brush aside the impropriety of Judge Gellada's May 5, 2016 Order, his act of granting MADCI's ex-parte motion for execution infringes on the time-honored principle that **"the notice requirement in a motion is mandatory"** because a "notice of motion is required where a party has a right to resist the relief sought by the motion and principles of natural justice demand that [a party's] right be not affected without an opportunity to be heard." What is striking was Judge Gellada's act of granting MADCI's ex-parte motion despite being aware of PI ONE's previous writ of possession over the assailed property before RTC Kabankalan City Branch 61; and of his nullifying the foreclosure and subsequent proceedings despite the pendency of a complaint for nullification of foreclosure proceedings before the RTC Bacolod City Branch. Not only was this a wanton disregard of PI ONE's right to due process but it also interfered with the orders and processes of a co-equal court.

Judge Gellada's administrative liability becomes more palpable as MADCI's Motion to Allow Petitioner to Avail of the Provisions of Rule 2, Sec. 73 of the Financial Rehabilitation Rules of

Procedure did not even pray for the nullification of the foreclosure proceedings or restoration of possession of the subject property.

III. PRACTICAL EXERCISES

A.Demand and authorization letters
B. Simple contracts: lease and sale
C. Special power of attorney
D. Verification and certificate of non-forum shopping
E.Notice of hearing and explanation in motions
F. Judicial Affidavits
G. Notarial certificates: jurat and acknowledgement
H. Motions for extension of time, to dismiss, and to declare in default