

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

LEGAL AND JUDICIAL ETHICS

- **A.C. No. 10179. March 4, 2014** Benjamin Q. Ong Vs. Atty. William F. Delos Santos

- **A lawyer's issuance of a worthless check renders him in breach of his oath to obey the laws.** To accord with the canon of professional responsibility that requires him to uphold the Constitution, obey the laws of the land, and promote respect for the law and legal processes, he thereby becomes administratively liable for gross misconduct.

Being a lawyer, Atty. Delos Santos was well aware of the objectives and coverage of *Batas Pambansa Blg. 22*. If he did not, he was nonetheless presumed to know them, for the law was penal in character and application. His issuance of the unfunded check involved herein knowingly violated *Batas Pambansa Blg. 22*, and exhibited his indifference towards the pernicious effect of his illegal act to public interest and public order.

He thereby swept aside his Lawyer's Oath that enjoined him to support the Constitution and obey the laws. He also took for granted the express commands of the *Code of Professional Responsibility*, specifically Canon 1, Rule 1.01 and Canon 7, Rule 7.03, viz:

CANON 1 - A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR THE 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.

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.

These canons, the Court has said in *Agno v. Cagatan*, required of him as a lawyer an enduring high sense of responsibility and good fidelity in all his dealings

That his act involved a private dealing with Ong did not matter. His being a lawyer invested him – whether he was acting as such or in a non- professional capacity – with the obligation to exhibit good faith, fairness and candor in his 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. His being a lawyer demanded that he conduct himself as a person of the highest moral and professional integrity and probity in his dealings with others.

Moreover, in issuing the dishonored check, Atty. Delos Santos put into serious question not only his personal integrity but also the integrity of the entire Integrated Bar. It cannot be denied that Ong acceded to Atty. Delos Santos' request for encashment of the check because of his complete reliance on the nobility of the Legal Profession.

Atty. Delos Santos should always be mindful of his duty to uphold the law and to be circumspect in all his dealings with the public. Any transgression of this duty on his part would not only diminish his reputation as a lawyer but would also erode the public's faith in the Legal Profession as a whole. His assuring Ong that he was in good financial standing because of his lucrative law practice when the contrary was true manifested his intent to mislead the latter into giving a substantial amount in exchange for his worthless post-dated check. Such

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

actuation did not speak well of him as a member of the Bar.

Accordingly, Atty. Delos Santos was guilty of serious misconduct, warranting appropriate administrative sanction.

- **A.M. No. RTJ-14-2376/A.M. No. RTJ-14-2377. March 5, 2014** Ma. Liza M. Jorda, City Prosecutor's Office, Tacloban City Vs. Judge Crisologo S. Bitas, RTC, Branch 7, Tacloban City; Prosecutor Leo C. Tabao Vs. Judge Crisologo S. Bitas, RTC, Branch 7, Tacloban City

- As a matter of public policy, not every error or mistake of a judge in the performance of his official duties renders him liable. In the absence of fraud, dishonesty or corruption, the acts of a judge in his official capacity do not always constitute misconduct although the same acts may be erroneous. True, a judge may not be disciplined for error of judgment, absent proof that such error was made with a conscious and deliberate intent to cause an injustice. This does not mean, however, that a judge need not observe propriety, discreteness and due care in the performance of his official functions.
- In the instant case, Miralles was charged with Qualified Trafficking, which under Section 10 (C) of R.A. No. 9208 is punishable by life imprisonment and a fine of not less than Two Million Pesos (P2,000,000.00) but not more than Five Million Pesos (P5,000,000.00). Thus, by reason of the penalty prescribed by law, the grant of bail is a matter of discretion which can be exercised only by respondent judge after the evidence is submitted in a hearing. The hearing of the application for bail in capital offenses is absolutely indispensable before a judge can properly determine whether the prosecution's evidence is weak or strong.

As correctly found by the Investigating Justice, with life imprisonment as one of the penalties prescribed for the offense charged against Miralles, he cannot be admitted to bail when evidence of guilt is strong, in accordance with Section 7, Rule 114 of the Revised Rules of Criminal Procedure.

Here, what is appalling is **not only did respondent judge deviate from the requirement of a hearing where there is an application for bail, respondent judge granted bail to Miralles without neither conducting a hearing nor a motion for application for bail.**

Respondent judge's justification that he granted bail, because he found the evidence of the prosecution weak, cannot be sustained because the records show that no such hearing for that purpose transpired. What the records show is a hearing to determine the existence of probable cause, not a hearing for a petition for bail. The hearing for bail is different from the determination of the existence of probable cause. The latter takes place prior to all proceedings, so that if the court is not satisfied with the existence of a probable cause, it may either dismiss the case or deny the issuance of the warrant of arrest or conduct a hearing to satisfy itself of the existence of probable cause. If the court finds the existence of probable cause, the court is mandated to issue a warrant of arrest or commitment order if the accused is already under custody, as when he was validly arrested without a warrant. It is only after this proceeding that the court can entertain a petition for bail where a subsequent hearing is conducted to determine if the evidence of guilt is weak or not. Hence, in granting bail and fixing it at P20,000.00 *motu proprio*, without allowing the prosecution to present its evidence, respondent judge denied the prosecution of due process. This Court had said so in many cases and had imposed sanctions on judges who granted applications for bail in capital offenses and in offenses punishable by *reclusion perpetua*, or life imprisonment, without

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

giving the prosecution the opportunity to prove that the evidence of guilt is strong.

Clearly, in the instant case, respondent judge's act of fixing the accused's bail and reducing the same *motu proprio* is not mere deficiency in prudence, discretion and judgment on the part of respondent judge, but a patent disregard of well-known rules. When an error is so gross and patent, such error produces an inference of bad faith, making the judge liable for gross ignorance of the law.

Likewise, we are convinced that respondent judge's actuations in the court premises during the hearing of the petition for commitment to the DSWD constitute abuse of authority and manifest partiality to the accused. Indeed, respondent judge's utterance of: "*I don't want to see your face!*"; "*You better transfer to another court!*"; "*You are being influenced by politicians*" was improper and does not speak well his stature as an officer of the Court. We note the improper language of respondent judge directed towards complainants in his Answers and Comments where he criticized them for their incompetence in handling the subject case. Respondent Bitas' use of abusive and insulting words, tending to project complainant's ignorance of the laws and procedure, prompted by his belief that the latter mishandled the cause of his client is obviously and clearly insensitive, distasteful, and inexcusable. Complainants, likewise, cannot be blamed for being suspicious of respondent's bias to the accused considering that the former can be associated with the accused following his admission that his sister was a classmate of one Nora Miralles. Considering the apprehension and reservation of the complainants, prudence dictates that respondent should have inhibited himself from hearing the case. Such abuse of power and authority could only invite disrespect from counsels and from the public.

In pending or prospective litigations

before them, judges should be scrupulously careful to avoid anything that may tend to awaken the suspicion that their personal, social or sundry relations could influence their objectivity. Not only must judges possess proficiency in law, they must also act and behave in such manner that would assure litigants and their counsel of the judges' competence, integrity and independence.

Even on the face of boorish behavior from those he deals with, he ought to conduct himself in a manner befitting a gentleman and a high officer of the court.

The use of intemperate language is included in the proscription provided by Section 1, Canon 4 of the New Code of Judicial Conduct, thus: "Judges shall avoid impropriety and the appearance of impropriety **in all the activities** of a judge." It bears stressing that as a dispenser of justice, respondent should exercise judicial temperament at all times, avoiding vulgar and insulting language. He must maintain composure and equanimity.

This Court has long held that court officials and employees are placed with a heavy burden and responsibility of keeping the faith of the public. Any impression of impropriety, misdeed or negligence in the performance of official functions must be avoided. This Court shall not countenance any conduct, act or omission on the part of all those involved in the administration of justice which would violate the norm of public accountability and diminish the faith of the people in the Judiciary.

- **A.C. No. 10164. March 10, 2014** Stephan Brunet and Virginia Romanillo Brunet Vs. Atty. Ronald L. Guaren

- Atty. Guaren to have violated the Canon of Professional Responsibility when he accepted the titling of complainants' lot and despite the acceptance of P7,000.00, he failed to perform his obligation and allowed 5 long years to elapse without any progress in

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

the titling of the lot. Atty. Guaren should also be disciplined for appearing in a case against complainants without a written consent from the latter.

The practice of law is not a business. It is a profession in which duty

to public service, not money, is the primary consideration. Lawyering is not

primarily meant to be a money-making venture, and law advocacy is not a

capital that necessarily yields profits. The gaining of a livelihood should be

a secondary consideration. The duty to public service and to the

administration of justice should be the primary consideration of lawyers,

who must subordinate their personal interests or what they owe to

3 themselves.

Canons 17 and 18 of the Code of Professional Responsibility provides that:

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.

In the present case, Atty. Guaren admitted that he accepted the amount of P7,000.00 as partial payment of his acceptance fee. He, however, failed to perform his obligation to file the case for the titling of complainants' lot despite the lapse of 5 years. Atty. Guaren breached his duty to serve his client with competence and diligence when he neglected a legal matter entrusted to him.

- **A.C. No. 5359. March 10, 2014** Ermelinda

Lad Vda. De Dominguez, represented by her Attorney-in-Fact, Vicente A. Pichon Vs. Atty. Arnulfo M. Agleron Sr.

- Atty. Agleron to have violated the Code of Professional Responsibility when he neglected a legal matter entrusted to him, and recommended that he be suspended from the practice of law for a period of four (4) months.

Atty. Agleron violated Rule 18.03 of the Code of Professional Responsibility, which provides that:

Rule 18.03-A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

Once a lawyer takes up the cause of his client, he is duty bound to serve his client with competence, and to attend to his client's cause with diligence, care and devotion regardless of whether he accepts it for a fee or for free. He owes fidelity to such cause and must always be mindful of the trust and confidence reposed in him.

In the present case, Atty. Agleron admitted his failure to file the complaint against the Municipality of Caraga, Davao Oriental, despite the fact that it was already prepared and signed. He attributed his non-filing of the appropriate charges on the failure of complainant to remit the full payment of the filing fee and pay the 30% of the attorney's fee. Such

justification, however, is not a valid excuse that would exonerate him from liability. As stated, every case that is entrusted to a lawyer deserves his full attention whether he accepts this for a fee or free. Even assuming that complainant had not remitted the full payment of the filing fee, he should have found a way to speak to his client and inform him about the insufficiency of the filing fee so he could file the complaint. Atty. Agleron obviously lacked professionalism in dealing with complainant and showed

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

incompetence when he failed to file the appropriate charges.

- **A.M. No. P-12-3070. March 11, 2014** Civil Service Commission Vs. Nenita C. Longos, Clerk II, MCTC, Del Carmen-Numancia-San Isidro-San Benito, Surigao del Norte

- At bench is an administrative case involving respondent Nenita C. Longos, employed as Clerk II of the Municipal Circuit Trial Court, Del Carmen-Numancia-San Isidro-San Benito, Surigao del Norte. The Office of the Court Administrator (OCA) found her guilty of dishonesty for allowing another person to take her 1992 Civil Service Professional Examination.

It is beyond question that the act of fraudulently securing one's appointment constitutes dishonesty. In *Office of the Court Administrator v. Bermejo*, we squarely ruled thus:

Dishonesty is defined as intentionally making a false statement on any material fact, or practicing or attempting to **practice any deception or fraud in securing his examination, appointment or registration.** Dishonesty is a serious offense which reflects a person's character and exposes the moral decay which virtually destroys his honor, virtue and integrity. It is a malevolent act that has no place in the judiciary, as no other office in the government service exacts a greater demand for moral righteousness from an employee than a position in the judiciary. (Emphasis supplied)

The case of Longos is not one of first impression. In numerous other cases, this Court has dismissed erring personnel of the judiciary whose civil service eligibility was unscrupulously obtained through the guise of another.

This fraudulent act by an aspiring civil servant will not be countenanced by the Court, much more so when committed by one who seeks to be employed in our fold.

After all, credibility undergirds the substance and process of the rendering of justice.

All public service must be founded on and sustained by *character*. With the right character, the *attitude* of judiciary employees is set in the right direction. It is then of utmost consequence that every employee of the

judiciary exhibit the highest sense of honesty and integrity to preserve the good name and integrity of the courts of justice.

- **A.M. No. RTJ-08-2151. March 11, 2014** Office of the Court Administrator Vs. Judge Edwin C. Larida, Jr., RTC, Branch 18, Tagaytay City

- A mysterious early Sunday morning fire in the records room of a courthouse set off a series of red flags pointing to anomalous acts allegedly committed by its inhabitants. It led to the resignation of a clerk of court after he had formally denounced the Presiding Judge for committing various anomalies and irregularities that are now the subjects of this administrative case against the Presiding Judge.

•

1. Violation of Administrative Circular No. 28-2008 by authorizing the detail of locally-funded employees to Branch 18 without obtaining permission from the Court, and by allowing them to take custody of court records and to draft court orders and rulings for him

Paragraph 3 of Administrative Circular No. 28-2008 also confined the service of locally-funded employees to giving assistance in the performance of clerical works, like receiving letters and other communications for the Branch, typing of addresses on envelopes for mailing, typing of certificates of appearance, and typing of monthly reports. Such employees were not to have the custody of court records,

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

or to have anything to do with the implementation of judicial processes, or to discharge other duties involving court proceedings beyond the merely clerical. The prohibition was intended to preserve the confidentiality of court records and proceedings, because such employees were not employed in the Judiciary.

Judge Larida admitted in his judicial affidavit that Marticio had drafted court orders and had done legal research in Branch 18. Under the circumstances, his claim of discontinuing Marticio's drafting activities upon the effectivity of Administrative Circular No. 28-2008 on March 11, 2008, assuming it to be true, did not diminish or excuse his violation if he still permitted Marticio to do legal research work thereafter. Legal research was an activity that was more than clerical. Clearly, Judge Larida did not comply with Administrative Circular No. 28-2008, which was a less serious charge under Section 9 of Rule 140, *Rules of Court*,

Knowingly allowing detailed employees to solicit commissions from bonding companies

Based on the foregoing, Judge Larida was not unaware of the solicitations by Marticio, Laggui and Cabanizas from the complaining bonding company. The solicitations were surely irregular and improper activities undertaken by persons visibly working for the courts. Considering that such activities were committed with his knowledge, Judge Larida should have done more than merely confronting them in the presence of the representative of the complaining bonding company, and then and there merely telling them to stop the solicitations. He should have instead immediately caused or called for their investigation and, if the evidence warranted, seen to their proper criminal prosecution. The firmer action by him would have avoided the undesirable impression that he had perversely

acquiesced to their activities. He thus contravened the *Code of Judicial Conduct*, which imposed on him the duty to take or initiate appropriate disciplinary measures against court personnel for unprofessional conduct of which he would have become aware,

Charge of soliciting money from the accused in Criminal Case No. TG-2969-98.

It is truly proper to emphasize at this point that a charge of bribery against a judge is easy to concoct and difficult to disprove; hence, the Court always demands that the complainant present a panoply of evidence in support of the accusation. A mere affidavit attesting that a judge demanded a bribe in exchange for the exoneration of an accused being tried before him is not sufficient. In order that an accusation of this nature is not to be considered a fairy tale, competent and reliable evidence other than the testimony of a lone witness needs to be adduced. Every administrative complaint levelled against a sitting judge must be examined with a discriminating eye, therefore, because its consequential effects are by their nature highly penal, to the extent that the respondent judge may face the sanction of dismissal from the service. Indeed, no judge should be disciplined for misconduct unless the evidence against him is competent and sufficient. Accordingly, the Court rightfully rejects any imputation of judicial misconduct in the absence of sufficient proof to sustain it.

Releasing the accused in Criminal Case No. TG-432-03 on bail despite their being positively identified as the perpetrators of the crime

Verily, the determination of whether or not the evidence of guilt of the accused in Criminal Case No. TG-4382-03 was strong for purposes of resolving the petition for bail was a matter of judicial discretion for Judge Larida as the trial judge. Only he

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

could competently resolve the matter of bail. His exercise of discretion must be sound and reasonable. In the view of the Investigating Justice, Judge Larida, having given a lot of thought to the petition for bail before granting it, soundly and reasonably exercised his discretion thereon. Unless an appropriate judicial review would show him to have acted arbitrarily, capriciously, or whimsically in doing so, his granting of the petition for bail should be upheld and respected.

This administrative investigation could not be the occasion to review Judge Larida's granting of bail. Only the proper superior court could say whether his exercise of discretion in resolving the petition for bail was sound and reasonable. Thus, Atty. Calma's adverse conclusion based on the transcript of the proceedings to the effect that the Prosecution's witnesses had positively identified the accused could not effectively contradict Judge Larida's determination of the issue of bail.

Whether the identification in Criminal Case No. TG-4382-03 was positively made or not was a matter for the judicial perception of Judge Larida only. In these proceedings, he explained his reasons for granting bail. We must respect his explanation. The accused in Criminal Case No. TG- 4382-03 were charged with the manufacture of methamphetamine hydrochloride. The relevant testimony of the Prosecution's witnesses was to the effect that at the time the police arrested them on July 12, 2003 the accused were loading boxes unto various trucks and vans, with the boxes being later on determined to contain illegal substances. As such, the testimony did not establish the manufacture of methamphetamine hydrochloride, the non-bailable offense charged, but a bailable lesser offense.

Charge of granting the motion to quash the information in Criminal Case No. TG-5307-06 without a case record and without requiring a

comment from the public prosecutor

The foregoing notwithstanding, Judge Larida should not have acted on Espiritu's motion to quash without first giving the public prosecutor the opportunity to comment on the motion. That opportunity was demanded by due process. As a judge, he should exercise patience and circumspection to ensure that the opposing sides are allowed the opportunity to be present and to be heard. Only thereby could he preclude any suspicion on the impartiality of his actuations. But he cannot now be sanctioned because it is a matter of public policy that in the absence of fraud, dishonesty or corruption, the acts of a judge done in his judicial capacity are not subject to disciplinary action although they are erroneous. Considering that there was no fraud, dishonesty or corruption that attended the omission of prior notice, we simply caution him against a repetition of the omission of prior notice.

- **A.M. IPI No. 12-204-CA-J. March 11, 2014** Re: Verified Complaint for Disbarment of AMA Land, Inc. (represented by Joseph B. Usita) Against Court of Appeals Associate Justices Hon. Danton Q. Bueser, Hon. Sesinando E. Villon and Hon. Ricardo R. Rosario

- Unfounded administrative charges against sitting judges truly degrade their judicial office, and interfere with the due performance of their work for the Judiciary. The complainant may be held liable for indirect contempt of court as a means of vindicating the integrity and reputation of the judges and the Judiciary.

Are the respondent Justices liable for knowingly rendering an unjust judgment and violating Canon 1, Rule 1.01; Canon 10, Rules 10.01 and 10.03 of the *Code of Professional Responsibility*; and Section 27, Rule 138 of the *Rules of Court*?

The administrative complaint is bereft of

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

merit.

In administrative proceedings, the complainant has the burden of proving the allegations of the complaint by substantial evidence. Failure to do so will lead to the dismissal of the complaint for its lack of merit. This is because an administrative charge against any official of the Judiciary must be supported by at least substantial evidence. But when the charge equates to a criminal offense, such that the judicial officer may suffer the heavy sanctions of dismissal from the service, the showing of culpability on the part of the judicial officer should be nothing short of proof beyond reasonable doubt, especially because the charge is penal in character.

AMALI fell short of the requirements for establishing its charge of knowingly rendering an unjust judgment against respondent Justices.

Knowingly rendering an unjust judgment constitutes a serious criminal offense. Article 204, *Revised Penal Code*, provides that any judge who "knowingly render[s] an unjust judgment in any case submitted to him for decision" is punished with *prision mayor* and perpetual absolute disqualification. To commit the offense, the offender must be a judge who is adequately shown to have rendered an unjust judgment, not one who merely committed an error of judgment or taken the unpopular side of a controversial point of law. The term knowingly means "sure knowledge, conscious and deliberate intention to do an injustice."

Thus, the complainant must not only prove beyond reasonable doubt that the judgment is patently contrary to law or not supported by the evidence but that it was also made with deliberate intent to perpetrate an injustice. Good faith and the absence of malice, corrupt motives or improper consideration are sufficient defenses that will shield a judge from the charge of rendering an unjust decision. In other words, the judge was motivated by

hatred, revenge, greed or some other similar motive in issuing the judgment. Bad faith is, therefore, the ground for liability. The failure of the judge to correctly interpret the law or to properly appreciate the evidence presented does not necessarily render him administratively liable.

But who is to determine and declare that the judgment or final order that the judicial officer knowingly rendered or issued was unjust? May such determination and declaration be made in administrative investigations and proceedings like a preliminary investigation by the public prosecutor? The answers to these queries are obvious – only a superior court acting by virtue of either its appellate or supervisory jurisdiction over the judicial actions involved may make such determination and declaration. Otherwise, the public prosecutor or administrative hearing officer may be usurping a basic judicial power of review or supervision lodged by the Constitution or by law elsewhere in the appellate court.

Moreover, AMALI's allegations directly attacked the validity of the proceedings in the CA through an administrative complaint. The attack in this manner reflected the pernicious practice by disgruntled litigants and their lawyers of resorting to administrative charges against sitting judges instead of exhausting all their available remedies. We do not tolerate the practice. In *Re: Verified Complaint of Engr. Oscar L. Ongjoco, Chairman of the Board/CEO of FH-GYMN Multi-Purpose and Transport Service Cooperative, against Hon. Juan Q. Enriquez, Jr., Hon. Ramon M. Bato, Jr. and Hon. Florito S. Macalino, Associate Justices, Court of Appeals*, we emphatically held that the filing of administrative complaints or even threats of the filing subverted and undermined the independence of the Judiciary,

It appears that AMALI is prone to bringing

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

charges against judicial officers who rule against it in its cases. That impression is not at all devoid of basis. The complaint herein is actually the second one that AMALI has brought against respondent Justices in relation to the performance of their judicial duty in the same case.

The filing of the meritless administrative complaints by AMALI was not only repulsive, but also an outright disrespect of the authority of the CA and of this Court. Unfounded administrative charges against judges truly degrade the judicial office, and interfere with the due performance of their work for the Judiciary. Although the Court did not then deem fit to hold in the first administrative case AMALI or its representative personally responsible for the unfounded charges brought against respondent Justices, it is now time, proper and imperative to do so in order to uphold the dignity and reputation of respondent Justices, of the CA itself, and of the rest of the Judiciary. AMALI and its representatives have thereby demonstrated their penchant for harassment of the judges who did not do its bidding, and they have not stopped doing so even if the latter were sitting judges. To tolerate the actuations of AMALI and its representatives would be to reward them with undeserved impunity for an obviously wrong attitude towards the Court and its judicial officers.

Indeed, no judicial officer should have to fear or apprehend being held to account or to answer for performing his judicial functions and office because such performance is a matter of public duty and responsibility. The office and duty to render and administer justice area function of sovereignty, and should not be simply taken for granted.

- **A.M. No. MTJ-13-1838. March 12, 2014** Spouses Ricardo and Evelyn Marcelo Vs. Judge Ramsey Domingo G. Pichay, MeTC, Br. 78, Paranaque City

- The essential issue in this case is whether or not Judge Pichay should

be held administratively liable for undue delay in the resolution of the pending incidents in Civil Case No. 2004-286.

The Constitution requires our courts to conscientiously observe the time periods in deciding cases and resolving matters brought to their adjudication, which, for lower courts, is three (3) months from the date they are deemed submitted for decision or resolution. Section 15, Article VIII of the 1987 Philippine Constitution (1987 Constitution) states this rule

the Court held that non- compliance with the periods prescribed under Section 15, Article VIII of the 1987 Constitution **constitutes gross inefficiency**, and, perforce, warrants the imposition of administrative sanctions against the defaulting judge, viz.: The Court has consistently impressed upon judges the need to decide cases promptly and expeditiously under the time-honored precept that justice delayed is justice denied. Every judge should decide cases with dispatch and should be careful, punctual, and observant in the performance of his functions for delay in the disposition of cases erodes the faith and confidence of our people in the judiciary, lowers its standards and brings it into disrepute. **Failure to decide a case within the reglementary period is not excusable and constitutes gross inefficiency warranting the imposition of administrative sanctions on the defaulting judge.**

As correctly observed by the OCA in this case, Judge Pichay failed to resolve the subject motions, namely the motion for reconsideration and supplemental motion, within the three (3) month-period prescribed therefor. Records show that Sps. Marcelo's period to file their comment/opposition to the supplemental motion and/ or rejoinder to the reply lapsed on October 18, 2009, at which time, the pending incidents were, as stated in the Order dated October 1,

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

2009, already deemed submitted for resolution. This is concordant with Section 15(2), Article VIII of the 1987 Constitution which states that "[a] case or matter shall be deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the Rules of Court or by the court itself."

Notwithstanding that the matter had already been submitted for resolution, Judge Pichay continued with the proceedings by setting the motions for hearing to the effect of unreasonably delaying the execution of the subject decision. Indeed, while it has been held that a presiding judge shall at all times remain in firm control of the proceedings, he is nevertheless mandated to adopt a policy against unwarranted delays. In this case, Judge Pichay did not sufficiently explain the reasons as to why he failed to resolve the pending incidents on time, as well as to why he still had to set the same for hearing and repeatedly grant postponements therefor, either *motu proprio* or by motion, despite the summary nature of ejectment proceedings and the ministerial nature of the subsequent issuance of a writ of execution. These considerations he should have been fully aware of. As case law instructs, "[e]jectment cases are summary proceedings intended to provide an expeditious means of protecting actual possession or right of possession of property," and that "it becomes mandatory or ministerial duty of the court to issue a writ of execution to enforce the judgment which has become executory. To add, the fact that Judge Pichay required medical attention on June 7, 2010 is no excuse for his default, considering that on such date, the subject motions were already due for resolution. Thus, without having duly applied for any extension before the Court, Judge Pichay was bound to resolve the pending incidents in the said case within the three (3) month-period prescribed by the Constitution. This, he, however, failed to

do, and, as such, the imposition of

administrative sanctions against him remains in order.

- **A.C. No. 10185. March 12, 2014** Licerio Dizon Vs. Atty. Marcelino Cabucana, Jr.

ISSUE: DISBARMENT DUE TO falsification of public document.

Section 1, Public Act No. 2103, otherwise known as the Notarial Law states:

The acknowledgment shall be before a notary public or an officer duly authorized by law of the country to take acknowledgments of instruments or documents in the place where the act is done. The notary public or the officer taking the acknowledgment shall certify that the person acknowledging the instrument or document is known to him and that he is the same person who executed it, acknowledged that the same is his free act and deed. The certificate shall be made under the official seal, if he is required by law to keep a seal, and if not, his certificate shall so state.

The requirement of affiant's personal appearance was further emphasized in Section 2 (b) of Rule IV of the Rules on Notarial Practice of 2004 which provides that:

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.

As a notary public, Atty. Cabucana should not notarize a document unless the person who signs it is the same person executing it and personally appearing before him to

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

attest to the truth of its contents. This is to enable him to verify the genuineness of the signature of the acknowledging party

and to ascertain that the document is the party's free and voluntary act and deed.

- **A.C. No. 9116. March 12, 2014** Nestor Figueras and Bienvenido Victoria, Jr. Vs. Atty. Diosdado B. Jimenez

- Respondent now comes to this Court essentially raising the issue whether the IBP correctly found him administratively liable for violation of Rule 12.03, Canon 12, Canon 17, Rule 18.03, and Canon 18 of the Code of Professional Responsibility.
- After careful consideration of the records of the case, the Court finds that the suspension of respondent from the practice of law is proper.
- The Court finds no merit in respondent's contention that complainants have no personality to file a disbarment case against him as they were not his clients and that the present suit was merely instituted to harass him.
- The procedural requirement observed in ordinary civil proceedings that only the real party-in-interest must initiate the suit does not apply in disbarment cases. In fact, the person who called the attention of the court to a lawyer's misconduct "is in no sense a party, and generally has no interest in the outcome."

In *Heck v. Judge Santos*, the Court held that "[a]ny interested person or the court *motu proprio* may initiate disciplinary proceedings." The right to institute disbarment proceedings is not confined to clients nor is it necessary that the person complaining suffered injury from the alleged wrongdoing. Disbarment proceedings are matters of public interest and the only basis for the judgment is the proof or failure of proof of the charges.

The Court agrees with the IBP that

respondent had been remiss in the performance of his duties as counsel for Congressional Village Homeowner's Association, Inc. Records show that respondent filed the first motion for extension of time to file appellant's brief **95** days after the expiration of the reglementary period to file said brief, thus causing the dismissal of the appeal of the homeowner's association. To justify his inexcusable negligence, respondent alleges that he was merely the supervising lawyer and that the fault lies with the handling lawyer. His contention, however, is belied by the records for we note that respondent had filed with the CA an Urgent Motion for Extension, which he himself signed on behalf of the law firm, stating that a previous motion had been filed but "due to the health condition of the undersigned counsel...he was not able to finish said Appellants' Brief within the fifteen (15) day period earlier requested by him." Thus, it is clear that respondent was personally in charge of the case.

A lawyer engaged to represent a client in a case bears the responsibility of protecting the latter's interest with utmost diligence. In failing to file the appellant's brief on behalf of his client, respondent had fallen far short of his duties as counsel as set forth in Rule 12.04, Canon 12 of the Code of Professional Responsibility which exhorts every member of the Bar not to unduly delay a case and to exert every effort and consider it his duty to assist in the speedy and efficient administration of justice. Rule 18.03, Canon 18 of the same Code also states that:

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.

- **A.M. No. P-12-3074. March 17, 2014** The Office of the Court Administrator Vs. Clarita R. Perez, Clerk of Court II,

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

Municipal Trial Court, San Teodoro-Baco-
Puerto Galera, Oriental Mindoro

ISSUE: misconduct for her failure to timely remit the judiciary funds in her custody and submit the Monthly Reports of Collections, Deposits and Withdrawals.

Clerks of Court perform a delicate function as designated custodians of the court's funds, revenues, records, properties and premises. As such, they are generally regarded as treasurer, accountant, guard and physical plant manager thereof. They are the chief administrative officers of their respective courts. It is also their duty to ensure that the proper procedures are followed in the collection of cash bonds. Thus, their failure to faithfully perform their duties makes them liable for any loss, shortage, destruction or impairment of such funds and property.

Under the Supreme Court (SC) Circular No. 13-92, clerks of courts are mandated to immediately deposit their fiduciary collections upon receipt thereof, with an authorized government depository bank. Section 3, in relation to Section 5 of SC Administrative Circular No. 5-93, specifically designates the Land Bank of the Philippines (LBP) as the authorized government depository of the JDF.

In the present case, not only did the respondent incur delay in the remittance of her fiduciary collections but she also used the money for her personal use.

While the Court empathizes with the respondent in her predicament concerning her brother's medical needs, her wrongdoing cannot be excused. As custodian of the court's funds and revenues, she was entrusted with the primary responsibility of correctly and effectively implementing regulations regarding fiduciary funds. She was an accountable officer entrusted with the great responsibility of collecting money belonging to the funds of the court. She was, therefore, liable for any loss, shortage, destruction, or impairment of

said funds and property.

She was not supposed to keep those funds in her possession or worse appropriate them for her personal use.

The respondent should have diligently observed SC Circular No. 13-92. Since there was no LBP branch near the court's station and the nearest branch is located an hour away in Calapan City, the respondent should have deposited the funds *via* Postal Money Order (PMO). According to the report of the CMO-OCA audit team, the respondent attributed the delay in the remittance of her fiduciary collections to the non-availability of PMOs in the Local Post Office of San Teodoro, Oriental Mindoro. However, the audit team was able to verify from the Local Postmaster that PMOs are always available. Stocks of PMOs run out only when the amount to be deposited reaches the maximum allowable amount of ₱10,000.00. Further, according to the Local Post Office, "as soon as the PMOs are exhausted, replenishment of the same is done immediately *via* the Post Office of Calapan City, which takes not more than a month."

The respondent's subsequent restitution of the amounts did not alter the fact that she was remiss in the discharge of her duties. Shortages in the amounts to be remitted and the years of delay in the actual remittance constitute gross neglect of duty for which the clerk of court shall be administratively liable.

By failing to timely remit the cash collections constituting public funds, she violated the trust reposed in her as disbursement officer of the Judiciary. Delay in the remittance of collection is a serious breach of duty. It deprives the Court of the interest that may be earned if the amounts are promptly deposited in a bank. It constitutes dishonesty which carries the extreme penalty of dismissal from the service even if committed for the first time.

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

- **A.C. No. 5329. March 18, 2014** Heinz R. Heck Vs. City Prosecutor Casiano A. Gamotin, Jr.

- This administrative complaint was brought against a City Prosecutor whose manner of dealing with the complainant, a foreigner, had offended the latter. We dismiss the complaint because of the complainant's failure to prove that the respondent thereby breached any canon of professional conduct or legal ethics. Indeed, every lawyer who is administratively charged is presumed innocent of wrongdoing.

However, unlike the OBC, we do not find any justification to sanction the respondent. A lawyer like the respondent is not to be sanctioned for every perceived misconduct or wrong actuation. He is still to be presumed innocent of wrongdoing until the proof arrayed against him establishes otherwise. It is the burden of the complainant to properly show that the assailed conduct or actuation constituted a breach of the norms of professional conduct and legal ethics. Otherwise, the lawyer merits exoneration.

To begin with, the holding of the meeting between Atty. Babarin, Heck's counsel, and Atty. Adaza in the respondent's office was not suspicious or irregular, contrary to the insinuation of Heck. We are not unmindful of the practice of some legal practitioners to arrange to meet with their opposing counsels and their clients in the premises of the offices of the public prosecutors or in the courthouses primarily because such premises are either a convenient or a neutral ground for both sides. Accordingly, holding the meeting between Heck and his adversary, with their respective counsels,

in the respondent's office did not by itself indicate any illegal or corrupt activity. We also note that the respondent was not

present in the meeting.

Secondly, we cannot sanction the respondent for having angrily reacted to Heck's unexpected tirade in his presence. The respondent was not then reacting to an attack on his person, but to Heck's disrespectful remark against Philippine authorities in general. Any self-respecting government official like the respondent should feel justly affronted by any expression or show of disrespect in his presence, including harsh words like those uttered by Heck. Whether or not Heck was justified in making the utterance is of no relevance to us. Lawyers may be expected to maintain their composure and decorum at all times, but they are still human, and their emotions are like those of other normal people placed in unexpected situations that can crack their veneer of self-control. That is how we now view the actuation of the respondent in reacting to Heck's utterance. The Court will not permit the respondent's good record to be tarnished by his having promptly reacted to Heck's remark.

Moreover, Heck could have sincerely perceived the respondent's actuations to be arrogant and overbearing, but it is not fair for us to take the respondent to task in the context of the events and occasions in which the actuations occurred in the absence of a credible showing that his actuations had been impelled by any bad motive, or had amounted to any breach of any canon of professional conduct or legal ethics.

Lastly, Heck complains that the respondent still entertained Atty. Adaza despite the latter having been already suspended from the practice of law. The respondent explains, however, that he "had no personal knowledge of Atty. Adaza's suspension and that such information was not properly disseminated to the proper offices."

We are inclined to believe the

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

respondent's explanation.

The Court meted on Atty. Adaza the suspension from the practice of law in its decision promulgated on March 27, 2000 in Adm. Case No. 4083 entitled *Gonato v. Adaza*. When Heck confronted the respondent on September 15, 2000 about his allowing Atty. Adaza to practice law despite his suspension, the respondent asked when Heck had learned of the suspension. The respondent thereby implied that he had been unaware of the suspension until then.

We believe that the respondent was not yet aware of the suspension at that time. In *Heck v. Atty. Versoza* (Adm. Case No. 5330, December 5, 2000), the Court clarified that Atty. Adaza's suspension became final and effective only after his receipt on September 5, 2000 of the resolution denying his motion for reconsideration with finality; and explained that he would be denied his right to due process if his suspension were to be made operative on March 27, 2000, the date when the Court ordered his suspension for six months. The Court further clarified in *Heck v. Atty. Versoza* that the courts in the country as well as the public would be informed of the suspension only after the lapse of a reasonable period after September 5, 2000 considering that as a matter of policy the circularization of the order of suspension could be done only after the decision upon the suspension had attained finality.

It was possible that at the occasion when Atty. Adaza appeared before the respondent on September 15, 2000, his suspension had not yet attained finality, or that the order of suspension had not yet been known to the respondent. Accordingly, it will be unjustified to hold the respondent liable for allowing Atty. Adaza to practice law and to represent his client in the OCP of Cagayan de Oro City.

Narag Vs. Atty. Dominador M. Narag
Dissenting Opinion **J. Leonen**

- Before this Court is a "Petition for Readmission" to the practice of law filed by Dominador M. Narag (Respondent).

"Whether the applicant shall be reinstated in the Roll of Attorneys rests to a great extent on the sound discretion of the Court. The action will depend on whether or not the Court decides that the public interest in the orderly and impartial administration of justice will continue to be preserved even with the applicant's reentry as a counselor at law. The applicant must, like a candidate for admission to the bar, satisfy the Court that he is a person of good moral character, a fit and proper person to practice law. The Court will take into consideration the applicant's character and standing prior to the disbarment, the nature and character of the charge/s for which he was disbarred, his conduct subsequent to the disbarment, and the time that has elapsed between the disbarment and the application for reinstatement."

The extreme penalty of disbarment was meted on the respondent on account of his having committed a grossly immoral conduct, *i.e.*, abandoning his wife and children to live with his much younger paramour. Indeed, nothing could be more reprehensible than betraying one's own family in order to satisfy an irrational and insatiable desire to be with another woman. The respondent's act was plainly selfish and clearly evinces his inappropriateness to be part of the noble legal profession.

More than 15 years after being disbarred, the respondent now professes that he had already repented and expressed remorse over the perfidy that he had brought upon his wife and their children. That such repentance and remorse, the respondent asserts, together with the long years that he had endured his penalty, is now

- **A.C. No. 3405. March 18, 2014** Julieta B.

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

sufficient to enable him to be readmitted to the practice of law.

The respondent's pleas, however, are mere words that are hollow and bereft of any substance. The Court, in deciding whether the respondent should indeed be readmitted to the practice of law, must be convinced that he had indeed been reformed; that he had already rid himself of any grossly immoral act which would make him inept for the practice of law. However, it appears that the respondent, while still legally married to Julieta, is still living with his paramour - the woman for whose sake he abandoned his family. This only proves to show that the respondent has not yet learned from his prior misgivings.

That he was supposedly forgiven by his wife and their children would likewise not be sufficient ground to grant respondent's plea. It is noted that only his son, Dominador, Jr., signed the affidavit which was supposed to evidence the forgiveness bestowed upon the respondent. Thus, with regard to Julieta and the six other children of the respondent, the claim that they had likewise forgiven the respondent is hearsay. In any case, that the family of the respondent had forgiven him does not discount the fact that he is still committing a grossly immoral conduct; he is still living with a woman other than his wife.

Likewise, that the respondent executed a holographic will wherein he bequeaths all his properties to his wife and their children is quite immaterial and would not be demonstrative that he had indeed changed his ways. Verily, nothing would stop the respondent from later on executing another last will and testament of a different tenor once he had been readmitted to the legal profession.

In fine, the Court is not convinced that the respondent had shown remorse over his transgressions and that he had already changed his ways as would merit his reinstatement to the legal, profession.

Time and again the Court has stressed that the practice of law is not a right but a privilege. It is enjoyed only by those who continue to display unassailable character.

- **A.M. No. 07-9-454-RTC/A.M. No. 05-2-108-RTC. March 18, 2014** Re: Judicial Audit Conducted in the Regional Trial Court, Branch 20, Cagayan De Oro City, Misamis Oriental/Request of Judge Gregorio D. Pantanosas, Jr., Regional Trial Court, Branch 20, Cagayan De Oro City, for Extension of Time to Decide Criminal Cases Nos. 92-1935 & 26 Others

- A Judge who fails to decide cases and related matters within the periods prescribed by law is guilty of gross inefficiency, and may be punished with dismissal from the service even for the first offense, unless he has been meanwhile separated from the service, in which instance he may be imposed the stiffest of fines. For falsely rendering certificates of service to the effect that he did not have any unresolved cases and matters pending in his court's docket, he is also guilty of dishonesty, another act of gross misconduct, for which he should be sanctioned with dismissal from the service even for the first offense. But his intervening separation from the service leaves the only proper penalty to be the forfeiture of his entire retirement benefits, except his earned leaves.

- **A.C. No. 9896. March 19, 2014** Ma. Elena Carlos Nebreja Vs. Atty. Benjamin Reonal

ISSUE: failure to file the contracted petition for annulment of marriage in her behalf; for his misrepresentation on its status; and for his use of a fictitious office address.

Despite the engagement of his services, respondent did not file the contracted petition. His conduct, as held in *Vda. De Enriquez v. San Jose*, amounted to

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

inexcusable negligence. This was found to be contrary to the mandate prescribed in Rule 18.03, Canon 18 of the Code of Professional Responsibility, which enjoined a lawyer not to neglect a legal matter entrusted to him.

Rule 18.03, Canon 18 of the Code of Professional Responsibility provides for the rule on negligence and states:

Rule 18.03 - A lawyer shall not neglect a legal matter entrusted to him and his negligence in connection therewith shall render him liable.

This Court has consistently held, in construing this Rule, that the mere failure of the lawyer to perform the obligations due to the client is considered per se a violation. Thus, a lawyer was held to be negligent when he failed to do anything to protect his client's interest after receiving his acceptance fee. In another case, this Court has penalized a lawyer for failing to inform the client of the status of the case, among other matters. In another instance, for failure to take the appropriate actions in connection with his client's case, the lawyer was suspended from the practice of law for a period of six months and was required to render accounting of all the sums he received from his client.

With regard to respondent's misrepresentation of his office address, the case of *Porac Trucking, Inc. v. Court of Appeals*, sets an example. In the said case, the Court imposed a six-month suspension on the lawyer after it was established that the said lawyer indeed claimed to be a lawyer of Porac Trucking, Inc. when, in truth and in fact, he was not. Still, in another case, the same six (6) month suspension was imposed on the erring lawyer after it was established that he claimed before the trial court to be a member of Citizens Legal Assistance Office when in truth, he was not.

In this case, respondent clearly received his acceptance fee, among others, and

then completely neglected his client's cause. Moreover, he failed to inform complainant of the true status of the petition. His act of receiving money as acceptance fee for legal services in handling the complainant's case and, subsequently, failing to render the services, was a clear violation of Canon 18 of the code of Professional Responsibility.

For all of respondent's acts - failure to file the contracted petition for annulment of marriage in behalf of the complainant, his misrepresentation on its status and his use of a fictitious office address, he deserves the penalty imposed upon him by the IBP.

The Court, however, deletes the aforementioned order stated in the resolution of the IBP, to wit, "To return the amount of Eighty Thousand Nine Hundred Pesos (P80,900.00) to complainant within five (5) days from notice with 12% interest per annum from the date this recommendation is affirmed by the Supreme Court." The Court has recently adopted the policy to let the complainant claim and collect the amount due from the respondent in an independent action, civil or criminal.

Nevertheless, the Court looks with disfavor at the non-payment by a lawyer of his due obligations.

• **A.M. No. MTJ-13-1823. March 19, 2014**

P/Sr. Insp. Teddy M. Rosqueta Vs. Judge Jonathan A. Asuncion, Municipal Trial Court in Cities, Branch 2, Laoag City, Ilocos Norte

- The members of the Bench are one of the pillars of our justice system. They must strive to observe the highest standards of integrity and probity in their professional and personal lives. The public has the right to expect an unimpeachable bearing from them. This expectation is not limited to their judgments, but extends to their public demeanor, and should stand to the closest of scrutiny. They

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

deserve to be condignly sanctioned otherwise.

Did Judge Asuncion take the firearm and give it to Refuerzo? If so, did he violate the *New Code of Judicial Conduct* as to make him guilty of gross misconduct?

After due consideration of the findings and evaluation of Executive Judge Ragucos, which the OCA adopted, we find that Judge Asuncion took the firearm and gave it to Refuerzo in violation of the *New Code of Judicial Conduct*. Accordingly, we pronounce him guilty of gross misconduct.

1. Explanations of Judge Asuncion were not entitled to credence

The firearm, then in the custody of Branch 2 of the MTCC, would have been evidence in Criminal Case No. 34412 to prove the charge of illegal possession of a firearm and its ammunitions, but its being offered as evidence did not ultimately come to pass because of the intervening quashal of the information on October 5, 2005 upon the motion of Canlas. Being unoffered evidence, the firearm had to be properly disposed of thereafter either by the Office of the City Prosecutor of Laoag City, whose evidence the firearm was supposed to be offered in court, or by the PNP, the agency expressly authorized by law to take custody of the firearm. Under SC Circular 47-98, *supra*, which was a substantial reiteration of SC Circular 2 dated May 13, 1983, Judge Asuncion and his clerk of court in Branch 2 had the ministerial duty and the primary responsibility to turn over the firearm to the proper office of the PNP (*i.e.*, FESAGS) because it would no longer be needed as evidence upon the dismissal of Criminal Case No. 34412. A ministerial duty or function is one that an officer or tribunal performs in the context of a given set of facts, in a prescribed manner and without regard to the exercise of judgment upon the propriety or impropriety of the act to be done. However, on April 11, 2006,

Judge Asuncion denied the motion filed on January 16, 2006 by the Office of the City Prosecutor of Laoag City seeking the turnover of the firearm to the PNP.

The actuations of Judge Asuncion in relation to the firearm conceded that the dismissal of Criminal Case No. 34412 did not invest the rightful custody of the firearm either in him or his court. Yet, the established facts and circumstances show that he still appropriated the firearm and given it to Refuerzo, his bodyguard. His appropriation of the firearm would have gone undiscovered had not the team led by Sr. Insp. Rosqueta seized it from Refuerzo, who had nothing to do with its proper custody. It then became incumbent upon Judge Asuncion to explain how the firearm landed in the possession of Refuerzo.

Judge Asuncion took the position that the firearm, unoffered in evidence because of the quashal of the information, still "impliedly belonged to Joseph Canlas;" hence, the directive of SC Circular 47-98 for the turnover of the firearm to the PNP did not apply to the firearm involved here. His position is clearly untenable. Firstly, he had no discretion to withhold the firearm from the PNP and to return it instead to Canlas, who held no license or authority to possess it. Indeed, the turnover to the PNP was based on the clear and straightforward text and tenor of SC Circular 47- 98 – *Firearms being used as evidence in courts will only be turned-in to FEO (now Firearms and Explosives Division) upon the termination of the cases or when it is no longer needed as evidence*. And, secondly, he did not sincerely believe in his own position, because he did he not order the return of the firearm to Canlas upon the dismissal of Criminal Case No. 34412.

The foregoing incongruities contained in Judge Asuncion's explanation inevitably lead us to conclude that he took a personal interest in the firearm and appropriated it. Accountability for his

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

actuations is inescapable for him. He was guilty of misusing evidence entrusted to his court. He thereby did not live up to the exacting standards prescribed by the *New Code of Judicial Conduct*, specifically its Canon 2 and Canon 4, viz:

CANON 2

INTEGRITY

Integrity is essential not only to the proper discharge of the judicial office but also to the personal demeanor of judges.

Section 1. Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer.

Sec. 2. The behavior and conduct of judges must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

CANON 4

PROPRIETY

Propriety and the appearance of propriety are essential to the performance of all the activities of a judge.

Section 1. Judges shall avoid impropriety and the appearance of impropriety in all of their activities.

The admonition that judges must avoid not only impropriety but also the appearance of impropriety is more sternly applied to lower court judges. Indeed, judges are reminded that after having accepted their exalted position in the Judiciary, they owe to the public to uphold the exacting standards of conduct demanded of them. The circumstances obtaining here seriously tainted the good image and reputation of the Judiciary, even as it reflected badly on Judge Asuncion's personal and official

reputation.

- **A.M. No. P-12-3055. March 26, 2014** Office of the Court Administrator Vs. Johni Glenn D. Runes

- We agree with the recommendation of the OCA that the Complaint regarding case-fixing should be dismissed for lack of testimonial or documentary evidence.
- Pursuant to Section 8, Rule II of the Revised Uniform Rules on Administrative Cases in the Civil Service (Uniform Rules): "No anonymous complaint shall be entertained unless there is obvious truth or merit to the allegations therein or supported by documentary or direct evidence, in which case the person complained of may be required to comment."

Indeed, the investigating team was able to gather information from various sources, but these sources failed to particularly identify respondent as the perpetrator of case-fixing in the processing of motions or applications for the reduction of bail. These informants refused to be identified and were reluctant to execute written testimonies, thus, making the information gathered from them inadmissible as evidence for being hearsay. Even the lone witness who was willing to disclose her identity did not directly identify respondent as the one responsible for case-fixing. Also, the author of the anonymous complaint never came out in the open to testify on his or her claim that respondent was engaged in illegal activity.

An accusation is not synonymous with guilt. One who alleges a fact has the burden of proving it, since mere allegation is not evidence. Reliance on mere allegations, conjectures and suppositions will leave an administrative complaint with no leg to stand on. Therefore, due to the absence of either testimonial or documentary evidence to prove the culpability of respondent in the charge of case-fixing, the case cannot be given due

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

course for insufficiency of evidence.

- **B.M. No. 2482. April 1, 2014** Re: Melchor Tiongson, Head Watcher, During the 2011 Bar Examinations

- This is an administrative case filed against Melchor Tiongson (Tiongson), head watcher of the 2011 bar examinations held at the University of Santo Tomas, Manila (UST), for bringing a digital camera inside the bar examination room, in violation of the Instructions to Head Watchers.

The Instructions to Head Watchers issued by the OBC clearly provide that "bringing of cellphones and other communication gadgets, deadly weapons, **cameras**, tape recorders, other radio or stereo equipment or any other electronic device is **strictly prohibited**."

Padilla, Puruganan and Padre, who were the watchers present in the same examination room, attested that they witnessed Tiongson's violation of this provision during the second Sunday of the bar examinations. Upon being called by the OBC, Tiongson admitted that he indeed brought a digital camera inside the bar examination room. Thus, we find that Tiongson's transgression of the rules issued by the OBC amounts to misconduct.

We, however, disagree with the OBC's recommendation that Tiongson's infraction amounted to gross misconduct and dishonesty.

Misconduct is grave if corruption, clear intent to violate the law or flagrant disregard of an established rule is present; otherwise, the misconduct is only simple. If any of the elements to qualify the misconduct as grave is not manifest and is not proven by substantial evidence, a person charged with grave misconduct may be held liable for simple misconduct. On the other hand, dishonesty refers to a person's 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."

We hold Tiongson liable for simple misconduct only, because the elements of grave misconduct were not proven with substantial evidence, and Tiongson admitted his infraction before the OBC.

As a CA employee, Tiongson disregarded his duty to uphold the strict standards required of every court employee, that is, to be an example of integrity, uprightness and obedience to the judiciary. Thus, he must be reminded that his infraction was unbecoming of a court employee amounting to simple misconduct.

Finally, the Instructions to Head Watchers provide that any violation of the instructions shall be a sufficient cause for disqualification from serving for the remainder of the examinations and in future examinations. Thus, we modify the recommended penalty of the OBC from indefinite disqualification to permanent disqualification from serving as bar personnel, in any capacity, in succeeding bar examinations.

- **A.M. No. RTJ-09-2200. April 2, 2014**

Antonio M. Lorenzana Vs. Judge Ma. Cecilia I. Austria, RTC, Br. 2, Batangas City

- We sustain Justice Gonzales-Sison's finding of gross ignorance of the law in so far as the respondent ordered the creation of a management committee without conducting an evidentiary hearing. The absence of a hearing was a matter of basic due process that no magistrate should be forgetful or careless about.
- **On the Charges of Grave Abuse of Authority; Irregularity in the Performance of Duty; Grave Bias and Partiality; and Lack of Circumspection**

Even granting that the respondent indeed

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

erred in the exercise of her judicial functions, these are, at best, legal errors correctible not by a disciplinary action, but by judicial remedies that are readily available to the complainant. "An administrative complaint is not the appropriate remedy for every irregular or erroneous order or decision issued by a judge where a judicial remedy is available, such as a motion for reconsideration or an appeal." Errors committed by him/her in the exercise of adjudicative functions cannot be corrected through administrative proceedings but should be assailed instead through judicial remedies.

On the Charges of Grave Bias and Partiality

We likewise find the allegations of bias and partiality on the part of the respondent baseless. The truth about the respondent's alleged partiality cannot be determined by simply relying on the complainant's verified complaint. Bias and prejudice cannot be presumed, in light especially of a judge's sacred obligation under his oath of office to administer justice without respect to the person, and to give equal right to the poor and rich. There should be clear and convincing evidence to prove the charge; mere suspicion of partiality is not enough.

In the present case, aside from being speculative and judicial in character, the circumstances cited by the complainant were grounded on mere opinion and surmises. The complainant, too, failed to adduce proof indicating the respondent's predisposition to decide the case in favor of one party. This kind of evidence would have helped its cause. The bare allegations of the complainant cannot overturn the presumption that the respondent acted regularly and impartially. We thus conclude that due to the complainant's failure to establish with clear, solid, and convincing proof, the allegations of bias and partiality must fail.

On the Charges of Grave

Incompetence and Gross Ignorance of the Law

We agree with the findings of the OCA that not every error or mistake of a judge in the performance of his official duties renders him liable. "[A]s a matter of policy, in the absence of fraud, dishonesty or corruption, the acts of a judge in his judicial capacity are not subject to disciplinary action even though such acts are erroneous."

The respondent approved the rehabilitation plan submitted by Atty. Gabionza, **subject to the modifications she found necessary to make the plan viable.** The complainant alleged that in modifying the plan, she exceeded her authority and effectively usurped the functions of a rehabilitation receiver. We find, however, that in failing to show that the respondent was motivated by bad faith or ill motives in rendering the assailed decision, the charge of gross ignorance of the law against her should be dismissed. "To [rule] otherwise would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment."

To constitute gross ignorance of the law, it is not enough that the decision, order or actuation of the judge in the performance of his official duties is contrary to existing law and jurisprudence. It must also be proven that he was moved by bad faith, fraud, dishonesty or corruption or had committed an error so egregious that it amounted to bad faith.

In the present case, nothing in the records suggests that the respondent was motivated by bad faith, fraud, corruption, dishonesty or egregious error in rendering her decision approving the modified rehabilitation plan. Besides his bare accusations, the complainant failed to substantiate his allegations with competent proof. Bad faith cannot be

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

presumed and this Court cannot conclude that bad faith intervened when none was actually proven.

With respect to the action of the respondent in ordering the creation of a management committee without first conducting an evidentiary hearing for the purpose, however, we find the error to be so egregious as to amount to bad faith, leading to the conclusion of gross ignorance of the law, as charged.

Due process and fair play are basic requirements that no less than the Constitution demands. In rehabilitation proceedings, the parties must first be given an opportunity to prove (or disprove) the existence of an imminent danger of dissipation, loss, wastage or destruction of the debtor-company's assets and properties that are or may be prejudicial to the interest of minority stockholders, parties-litigants or the general public. The rehabilitation court should hear both sides, allow them to present proof and conscientiously deliberate, based on their submissions, on whether the appointment of a management receiver is justified. This is a very basic requirement in every adversarial proceeding that no judge or magistrate can disregard.

On this basis, we conclude that the respondent's act of promptly ordering the creation of a management committee, without the benefit of a hearing and despite the demand for one, was tantamount to punishable professional incompetence and gross ignorance of the law.

On the Ground of Conduct Unbecoming of a Judge

On the allegation of conduct unbecoming of a judge, Section 6, Canon 6 of the New Code of Judicial Conduct states that:

SECTION 6. Judges shall maintain order and decorum in all proceedings before the court and **be patient, dignified and courteous in relation to litigants, witnesses, lawyers and others with whom the judge deals in an official capacity**. Judges shall require similar conduct of legal representatives, court staff and others subject to their influence, direction or control.

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. He must exhibit the hallmark judicial temperament of utmost sobriety and self-restraint. He should choose his words and exercise more caution and control in expressing himself. In other words, a judge should possess the virtue of *gravitas*.

As held in *De la Cruz (Concerned Citizen of Legazpi City) v. Judge Carretas*, a judge should be considerate, courteous and civil to all persons who come to his court; he should always keep his passion guarded. He can never allow it to run loose and overcome his reason. Furthermore, a magistrate should not descend to the level of a sharp-tongued, ill-mannered petty tyrant by uttering harsh words, snide remarks and sarcastic comments.

Accordingly, the respondent's unnecessary bickering with SCP's legal counsel, her expressions of exasperation over trivial procedural and negligible lapses, her snide remarks, as well as her condescending attitude, are conduct that the Court cannot allow. They are displays of arrogance and air of superiority that the Code abhors.

She also failed to maintain the decorum required by the Code and to use temperate language befitting a magistrate. "As a judge, [she] should ensure that [her] conduct is always above reproach and perceived to be so by a reasonable observer. [She] must never

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

show conceit or even an appearance thereof, or any kind of impropriety.”

Section 1, Canon 2 of the New Code of Judicial Conduct states that:

SECTION 1. Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer.

In these lights, the respondent exhibited conduct unbecoming of a judge and thus violated Section 6, Canon 6 and Section 1, Canon 2 of the New Code of Judicial Conduct.

On the Ground of Impropriety

We are not unaware of the increasing prevalence of social networking sites in the Internet – a new medium through which more and more Filipinos communicate with each other. **While judges are not prohibited from becoming members of and from taking part in social networking activities, we remind them that they do not thereby shed off their status as judges.** They carry with them in cyberspace the same ethical responsibilities and duties that every judge is expected to follow in his/her everyday activities. It is in this light that we judge the respondent in the charge of impropriety when she posted her pictures in a manner viewable by the public.

Lest this rule be misunderstood, **the New Code of Judicial Conduct does not prohibit a judge from joining or maintaining an account in a social networking site such as *Friendster*.** Section 6, Canon 4 of the New Code of Judicial Conduct recognizes that judges, like any other citizen, are entitled to freedom of expression. This right "includes the freedom to hold opinions without interference and impart information and ideas **through any media** regardless of

frontiers.” Joining a social networking site is an exercise of one’s freedom of expression. The respondent judge’s act of joining *Friendster* is, therefore, *per se* not violative of the New Code of Judicial Conduct.

Section 6, Canon 4 of the New Code of Judicial Conduct, however, also imposes a correlative restriction on judges: in the exercise of their freedom of expression, **they should always conduct themselves in a manner that preserves the dignity of the judicial office and the impartiality and independence of the Judiciary.**

This rule reflects the general principle of propriety expected of judges in all of their activities, whether it be in the course of their judicial office or in their personal lives.

Based on this provision, we hold that the respondent disregarded the propriety and appearance of propriety required of her when she posted *Friendster* photos of herself wearing an “off-shouldered” suggestive dress and made this available for public viewing.

To restate the rule: in communicating and socializing through social networks, judges must bear in mind that what they communicate – regardless of whether it is a personal matter or part of his or her judicial duties – creates and contributes to the people’s opinion not just of the judge but of the entire Judiciary of which he or she is a part. This is especially true when the posts the judge makes are viewable not only by his or her family and close friends, but by acquaintances and the general public.

Thus, it may be acceptable for the respondent to show a picture of herself in the attire she wore to her family and close friends, but when she made this picture available for public consumption, she placed herself in a situation where she, and the status she holds as a judge, may

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

be the object of the public's criticism and ridicule. The nature of cyber communications, particularly its speedy and wide-scale character, renders this rule necessary.

We are not also unaware that the respondent's act of posting her photos would seem harmless and inoffensive had this act been done by an ordinary member of the public. As the visible personification of law and justice, however, **judges are held to higher standards of conduct and thus must accordingly comport themselves.**

This exacting standard applies **both to acts involving the judicial office and personal matters.** The very nature of their functions requires behavior under exacting standards of morality, decency and propriety; both in the performance of their duties and their daily personal lives, they should be beyond reproach.

- **A.M. No. MTJ-12-1806. April 7, 2014** Office of the Court Administrator Vs. Judge Borromeo R. Bustamante, Municipal Trial Court in Cities, Alaminos City, Pangasinan

- Decision-making, among other duties, is the primordial and most important duty of a member of the bench. The speedy disposition of cases in the courts is a primary aim of the judiciary so the ends of justice may not be compromised and the judiciary will be true to its commitment to provide litigants their constitutional right to a speedy trial and a speedy disposition of their cases.

The Constitution, Code of Judicial Conduct, and jurisprudence consistently mandate that a judge must decide cases within 90 days from submission.

Rule 1.02, Canon 1 of the Code of Judicial Conduct states that judges should administer justice *without delay*. Rule 3.05 of Canon 3 states that judges shall dispose of the court's business *promptly* and decide cases *within the required*

periods.

This Court has always emphasized the need for judges to decide cases within the constitutionally prescribed 90-day period. Any delay in the administration of justice, no matter how brief, deprives the litigant of his right to a speedy disposition of his case. Not only does it magnify the cost of seeking justice, it undermines the people's faith and confidence in the judiciary, lowers its standards, and brings it to disrepute.

Equally unacceptable for the Court is Judge Bustamante's explanation that he failed to decide Civil Case Nos. 1937 and 2056 because of the lack of Transcript of Stenographic Notes (TSN). the Court finds Judge Bustamante's lack of effort to have the TSN completed as the root cause for the delay in deciding the two cases.

Least acceptable of Judge Bustamante's explanations for his delay in deciding cases and/or resolving pending incidents was oversight. A judge is responsible, not only for the dispensation of justice but also for managing his court efficiently to ensure the prompt delivery of court services. Since he is the one directly responsible for the proper discharge of his official functions, he should know the cases submitted to him for decision or resolution, especially those pending for more than 90 days.

- **Gershon N. Dulang Vs. Judge Mary Jocelyn G. Regencia, MCTC, Asturias-Balamban, Cebu** A.M. No. MTJ-14-1841. June 2, 2014

- The sole issue raised for the Court's resolution is whether or not Judge Regencia may be held administratively liable for undue delay in rendering a decision.

•

• The Court's Ruling

•

- The Court agrees with the findings and conclusions of the OCA, with the modification, however, as to the penalty imposed on Judge

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

Regencia.

-
- Prompt disposition of cases is attained basically through the efficiency and dedication to duty of judges. If judges do not possess those traits, delay in the disposition of cases is inevitable to the prejudice of the litigants. Accordingly, judges should be imbued with a high sense of duty and responsibility in the discharge of their obligation to administer justice promptly.²⁵ This is embodied in Rule 3.05, Canon 3 of the Code of Judicial Conduct which states that "[a] judge shall dispose of the court's business promptly and decide cases within the required periods" and echoed in Section 5, Canon 6 of the New Code of Judicial Conduct for the Philippine Judiciary²⁶ which provides that "[j]udges shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly, and with reasonable promptness."
-
- Here, it is undisputed that Civil Case No. 212-B was already submitted for resolution on October 17, 2008. Being an ejectment case, it is governed by the Rules of Summary Procedure which clearly sets a period of thirty (30) days from the submission of the last affidavit or position paper within which a decision thereon must be issued.²⁷ Despite this, Judge Regencia rendered judgment only about two (2) years and four (4) months later, or on February 18, 2011. While rules prescribing the time within which certain acts must be done are indispensable to prevent needless delays in the orderly and speedy disposition of cases and, thus, should be regarded as mandatory,²⁸ the Court has nevertheless been mindful of the plight of judges and has been understanding of

circumstances that may hinder them from promptly disposing of their businesses and, as such, has allowed extensions of time due to justifiable reasons.²⁹ However, Judge Regencia failed to proffer any acceptable reason in delaying the disposition of the ejectment case, thus, making her administratively liable for undue delay in rendering a decision.

- **Office of the Court Administrator Vs. Sarah P. Ampong, etc.** A.M. No. P-13-3132. June 4, 2014

- The issue raised for the Court's resolution is whether or not Ampong had been dismissed from her employment as Court Interpreter III of the RTC.
-
- **The Court's Ruling**
-
- The Court resolves the issue in the affirmative.
-
- As the records show, in the August 26, 2008 Decision, the Court had already held Ampong administratively liable for dishonesty in impersonating and taking the November 1991 Civil Service Eligibility Examination for Teachers

Pursuant to the doctrine of immutability of judgment, which states that "a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law,"¹⁸ Ampong could no longer seek the August 26, 2008 Decision's modification and reversal. Consequently, the penalty of dismissal from service on account of Ampong's Dishonesty should be enforced in its full course. In line with Section 58(a)¹⁹ of the Uniform Rules on Administrative Cases in the Civil Service (URACCS), the penalty of dismissal carries with it the following administrative disabilities: (a) cancellation of civil service eligibility; (b) forfeiture of retirement

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

benefits; and (c) perpetual disqualification from re-employment in any government agency or instrumentality, including any government-owned and controlled corporation or government financial institution. Ampong should be made to similarly suffer the same.

It must be stressed that every employee of the Judiciary should be an example of integrity, uprightness, and honesty. Like any public servant, she must exhibit the highest sense of honesty and integrity not only in the performance of her official duties but also in her personal and private dealings with other people, to preserve the court's good name and standing. The image of a court of justice is mirrored in the conduct, official and otherwise, of the personnel who work thereat, from the judge to the lowest of its personnel. Court personnel have been enjoined to adhere to the exacting standards of morality and decency in their professional and private conduct in order to preserve the good name and integrity of the courts of justice. Here, Ampong failed to meet these stringent standards set for a judicial employee and does not, therefore, deserve to remain with the Judiciary.²¹

• **Atty. Alan F. Pagua Vs. Atty. Manuel T. Molina** A.C. No. 9881. June 4, 2014

For resolution by this Court is the dismissal by the Integrated Bar of the Philippines (IBP) Board of Governors of the administrative Complaint for DISHONESTY against respondent, Atty. Manuel Molina. Atty. Molina allegedly advised his clients to enforce a contract on the complainant's client who had never been a party to the agreement.

When it comes to administrative cases against lawyers, two things are to be considered: quantum of proof, which requires clearly preponderant evidence; and burden of proof, which is on the complainant.¹²

In the present case, we find that the Complaint is without factual basis. Complainant Atty. Pagua charges Atty. Molina with providing legal advice to the

latter's clients to the effect that the Times Square Preamble is binding on complainant's client, Mr. Abreu, who was not a signatory to the agreement. The allegation of giving legal advice, however, was not substantiated in this case, either in the complaint or in the corresponding hearings. Nowhere do the records state that Atty. Pagua saw respondent giving the legal advice to the clients of the latter. Bare allegations are not proof.¹³

Even if we assume that Atty. Molina did provide his clients legal advice, he still cannot be held administratively liable without any showing that his act was attended with bad faith or malice. The rule on mistakes committed by lawyers in the exercise of their profession is as follows:

An attorney-at-law is not expected to know all the law. For an honest mistake or error, an attorney is not liable. Chief Justice Abbott said that, no attorney is bound to know all the law; God forbid that it should be imagined that an attorney or a counsel, or even a judge, is bound to know all the law. x x x.¹⁴

The default rule is presumption of good faith. On the other hand, bad faith is never presumed. It is a conclusion to be drawn from facts. Its determination is thus a question of fact and is evidentiary.¹⁵ There is no evidence, though, to show that the legal advice, assuming it was indeed given, was coupled with bad faith, malice, or ill-will. The presumption of good faith, therefore, stands in this case.

• **Adelia V. Quiachon Vs. Atty. Joseph Ador A. Ramos** A.C. No. 9317. June 4, 2014

- This Court finds this to be an opportune time to remind the investigating commissioners and the members of the Board of Governors of the IBP that the withdrawal of a disbarment case against a lawyer does not terminate or abate the jurisdiction of the IBP and of this Court to continue an administrative

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

proceeding against a lawyer-respondent as a member of the Philippine Bar.¹³

-
- In the present case, Almeyda recommended the dismissal of the case against respondent, even after finding that the latter had been negligent. On the basis of this finding, the latter was declared to have "been remiss in failing to update complainant in what had happened to the cases being handled by him in behalf of complainant."¹⁴ Still, Almeyda recommended the dismissal of the case, because "without the complaint, there will be no basis to make any finding of liability."¹⁵ The Board of Governors of the IBP affirmed the recommendation.

-
- The IBP Board of Governors should not have supported Almeyda's stance.
-

- The complainant in a disbarment case is not a direct party to the case, but a witness who brought the matter to the attention of the Court.¹⁶ There is neither a plaintiff nor a prosecutor in disciplinary proceedings against lawyers. The real question for determination in these proceedings is whether or not the attorney is still a fit person to be allowed the privileges of a member of the bar.¹⁷ Public interest is the primary objective.

In this case, the IBP found that respondent violated Canon Rules 18.03 and 18.04 of the Code of Professional Responsibility. Thus, it should have imposed the appropriate penalty despite the desistance of complainant or the withdrawal of the charges.

The failure of respondent to file an appeal from the CA Decision without any justifiable reason deserves sanction. Lawyers who disagree with the pursuit of an appeal should properly withdraw their

appearance and allow their client to retain another counsel.¹⁹

In the present case, respondent failed not only to keep the client informed of the status of the case, but also to avail of the proper legal remedy that would promote the client's cause. It is clear that respondent neglected the case entrusted to him.

All lawyers owe fidelity to their client's cause.²² Regardless of their personal views, they must present every remedy or defense within the authority of the law in support of that cause.²³ Whenever lawyers take on their clients' cause/s, they covenant that they will exercise due diligence in protecting the client's rights; their failure to exercise that degree of vigilance and attention expected of a good father of a family makes them unworthy of the trust reposed in them by their client/s and make them answerable to the client, the courts and society.²⁴

- **Argel D. Hernandez Vs. Judge Victor C. Gelia, Legal Researcher Clarince B. Jintalan, and Sheriff IV Rowena B. Jintalan, all of the Reginal Trail Court, Br. 52, Sorsogon City** A.M. No. RTJ-13-2356. June 9, 2014

We reiterate that an administrative complaint against a judge is not a substitute for a proper remedy taken in due course to review and undo his acts or omissions done in the performance of his judicial duties and functions. For any litigant to insist otherwise is censurable because the complaint adversely affects the administration of justice and harms the reputation of a judicial officer.

The filing of administrative complaints or just the threats of the filing of such complaints do subvert and undermine the independence of the Judiciary and its Judges. Thus, the Court does not tolerate unwarranted administrative charges brought against sitting magistrates in respect of their judicial actions. Moreover, as the Court pointedly observed in *Re: Verified Complaint of Engr. Oscar L. Ongjoco, Chairman of the Board/CEO of*

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

*FH-GYMN Multi-Purpose and Transport Service Cooperative, against Hon. Juan Q. Enriquez, Jr., Hon. Ramon M. Bato, Jr. and Hon. Florito S. Macalino, Associate Justices, Court of Appeals,*⁹ to wit:

It is evident to us that Ongjoco's objective in filing the administrative complaint was to take respondent Justices to task for the regular performance of their sworn duty of upholding the rule of law. **He would thereby lay the groundwork for getting back at them for not favoring his unworthy cause. Such actuations cannot be tolerated at all, for even a mere threat of administrative investigation and prosecution made against a judge to influence or intimidate him in his regular performance of the judicial office always subverts and undermines the independence of the Judiciary.**

We seize this occasion, therefore, to stress once again that disciplinary proceedings and criminal actions brought against any judge in relation to the performance of his official functions are neither complementary to nor suppletory of appropriate judicial remedies, nor a substitute for such remedies. Any party who may feel aggrieved should resort to these remedies, and exhaust them, instead of resorting to disciplinary proceedings and criminal actions.¹⁰

(Bold supplied) *emphasis*

The nature of adjudication by a judicial magistrate as a function of sovereignty invests the magistrate with a great degree of immunity from administrative and other liabilities.

• **Jose Francisco T. Baens Vs. Atty. Jonathan T. Sempio** A.C. No. 10378. June 9, 2014

- The relationship between a lawyer and his client is one imbued with utmost trust and confidence. In this regard, clients are led to expect that lawyers would be ever-mindful of their cause and

accordingly exercise the required degree of diligence in handling their affairs. For his part, the lawyer is expected to maintain at all times a high standard of legal proficiency, and to devote his full attention, skill, and competence to the case, regardless of its importance and whether he accepts it for a fee or for free.¹⁶ Lawyering is not a business; it is a profession in which duty of public service, not money, is the primary consideration.¹⁷

- It is beyond dispute that the complainant engaged the services of the respondent to handle his case. The records, however, definitively bear out that the respondent was completely remiss and negligent in handling the complainant's case, notwithstanding his receipt of the sum of P250,000.00 for the total expenses to be incurred in the said case.
- The excuse proffered by the respondent that he did not receive any orders or notices from the trial court is highly intolerable. In the first place, securing a copy of such notices, orders and case records was within the respondent's control and is a task that a lawyer undertakes. Moreso, the preparation and the filing of the answer is a matter of procedure that fully fell within the exclusive control and responsibility of the respondent. It was incumbent upon him to execute all acts and procedures necessary and incidental to the advancement of his client's cause of action.

Records further disclose that the respondent omitted to update himself of the progress of his client's case with the trial court, and neither did he resort to available legal remedies that might have protected his client's interest. Although a lawyer has complete discretion on what

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

legal strategy to employ in a case entrusted to him, he must present every remedy or defense within the authority of law to support his client's interest. When a lawyer agrees to take up a client's cause, he covenants that he will exercise due diligence in protecting the latter's rights.¹⁸

Evidently, the acts of the respondent plainly demonstrated his lack of candor, fairness, and loyalty to his client as embodied in Canon 15 of the Code. A lawyer who performs his duty with diligence and candor not only protects the interest of his client; he also serves the ends of justice, does honor to the bar, and helps maintain the respect of the community to the legal profession.¹⁹

In this case, the respondent's reckless and inexcusable negligence deprived his client of due process and his actions were evidently prejudicial to his clients' interests. A lawyer's duty of competence and diligence includes not merely reviewing the cases entrusted to his care or giving sound legal advice, but also consists of properly representing the client before any court or tribunal, attending scheduled hearings or conferences, preparing and filing the required pleadings, prosecuting the handled cases with reasonable dispatch, and urging their termination even without prodding from the client or the court.²⁰

Clearly, it cannot be doubted that the respondent violated Canon 17, and Rule 18.03 of Canon 18 of the Code which states that "a lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him." It further mandates that "a lawyer shall serve his client with competence and diligence," and that "a lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable."²¹

It must be emphasized that after the respondent agreed to handle the complainant's case, he became duty-bound to serve his client with competence

and diligence, and to champion his cause with whole-hearted fidelity. By failing to afford his client every remedy and defense that is authorized by law, the respondent fell short of what is expected of him as an officer of the Court.²²

- **Euprocina I. Crisostomo, et al. Vs. Atty. Philip Z.A. Nazareno** A.C. No. 6677. June 10, 2014

- **The Issue Before the Court**
- The essential issue in this case is whether or not Atty. Nazareno should be held administratively liable and accordingly suspended for a period of one (1) month.
- **The Court's Ruling**
- The Court affirms the IBP's findings with modification as to the penalty imposed.
- Separate from the proscription against forum shopping³¹ is the violation of the certification requirement against forum shopping, which was distinguished in the case of *Sps. Ong v. CA*³² as follows:
- The distinction between the prohibition against forum shopping and the certification requirement should by now be too elementary to be misunderstood. To reiterate, compliance with the certification against forum shopping is separate from and independent of the avoidance of the act of forum shopping itself. There is a difference in the treatment between failure to comply with the certification requirement and violation of the prohibition against forum shopping not only in terms of imposable sanctions but also in the manner of enforcing them. The former constitutes sufficient cause for the dismissal without prejudice to the filing of the complaint or initiatory pleading upon motion and

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

after hearing, while the latter is a ground for summary dismissal thereof and for direct contempt. x x x.³³

-
- Under Section 5, Rule 7 of the Rules of Court, the submission of false entries in a certification against forum shopping constitutes indirect or direct contempt of court, and **subjects the erring counsel to the corresponding administrative and criminal actions,**

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

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.

x x x x

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

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

In this case, it has been established that Atty. Nazareno made false declarations in the certifications against forum shopping attached to Rudex's pleadings, for which he should be held administratively liable.

Records show that Atty. Nazareno, acting as Rudex's counsel, filed, in August 2003, petitions for review assailing the judgments of default rendered in the first batch of rescission cases without

disclosing in the certifications against forum shopping the existence of the ejectment case it filed against Sps. Sioting which involves an issue related to the complainants' rescission cases. Further, on January 29, 2004, Rudex, represented by Atty. Nazareno, filed a complaint for rescission and ejectment against Sps. Sioting without disclosing in the certifications against forum shopping the existence of Sioting's May 24, 2002 rescission complaint against Rudex as well as Rudex's own September 9, 2002 ejectment complaint also against Sps. Sioting. Finally, on April 1, 2004, Atty. Nazareno, once more filed rescission and ejectment complaints against the other complainants in this case without disclosing in the certifications against forum shopping the existence of complainants' own complaints for rescission.

Owing to the **evident similarity of the issues involved** in each set of cases, Atty. Nazareno – as mandated by the Rules of Court and more pertinently, the canons of the Code – should have truthfully declared the existence of the pending related cases in the certifications against forum shopping attached to the pertinent pleadings. Considering that Atty. Nazareno did not even bother to refute the charges against him despite due notice, the Court finds no cogent reason to deviate from the IBP's resolution on his administrative liability. However, as for the penalty to be imposed, the Court deems it proper to modify the IBP's finding on this score.

Separately, the Court further finds Atty. Nazareno guilty of malpractice as a notary public, considering that he assigned only one document number (*i.e.*, Doc. No. 1968) to the certifications against forum shopping attached to the six (6) April 1, 2004 complaints for rescission and ejectment despite the fact that each of them should have been treated as a separate notarial act. It is a standing rule that for every notarial act, the notary shall record in the notarial register at the time of the notarization, among others, the

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

entry and page number of the document notarized, and that he shall give to each instrument or document executed, sworn to, or acknowledged before him a number corresponding to the one in his register.³⁵ Evidently, Atty. Nazareno did not comply with the foregoing rule.

Worse, Atty. Nazareno notarized the certifications against forum shopping attached to all the aforementioned complaints, fully aware that they identically asserted a material falsehood, i.e., that Rudex had not commenced any actions or proceedings or was not aware of any pending actions or proceedings involving the same issues in any other forum. The administrative liability of an erring notary public in this respect was clearly delineated as a violation of Rule 1.01, Canon 1 of the Code

In said case, the lawyer who knowingly notarized a document containing false statements had his notarial commission revoked and was disqualified from being commissioned as such for a period of one (1) year. Thus, for his malpractice as a notary public, the Court is wont to additionally impose the same penalties of such nature against him. However, due to the multiplicity of his infractions on this front, coupled with his willful malfeasance in discharging the office, the Court deems it proper to revoke his existing commission and permanently disqualify him from being commissioned as a notary public. Indeed, respondent ought to be reminded that:³⁸

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 converts a private document into a public document thus making that document admissible in evidence without further proof of its authenticity. A notarial document is by law entitled to full faith and credit upon its face. Courts, administrative agencies and the public at large must be able to rely upon the acknowledgment executed by a notary

public and appended to a private instrument.

x x x x

When a notary public certifies to the due execution and delivery of the document under his hand and seal he gives the document the force of evidence. Indeed, one of the purposes of requiring documents to be acknowledged before a notary public, in addition to the solemnity which should surround the execution and delivery of documents, is to authorize such documents to be given without further proof of their execution and delivery. Where the notary public is a lawyer, a graver responsibility is placed upon him by reason of his solemn oath to obey the laws and to do no falsehood or consent to the doing of any. Failing in this, he must accept the consequences of his unwarranted actions.

• **Amado T. Dizon Vs. Atty. Norlita de Taza**
A.C. No. 7676. June 10, 2014

This concerns an administrative complaint¹ for disbarment against Atty. Norlita De Taza (Atty. De Taza) for the latter's demand for and receipt of exorbitant sums of money from her client purportedly to expedite the proceedings of their case which was pending before the Court.

The Court has time and again ruled that disciplinary proceedings are investigations by the Court to ascertain whether a lawyer is fit to be one. There is neither a plaintiff nor a prosecutor therein. As this Court held in *Gatchalian Promotions Talents Pool, Inc. v. Atty. Naldoza*,²⁶ citing *In the Matter of the Proceedings for Disciplinary Action Against Atty. Almacen, et al. v. Yaptinchay*:²⁷

"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 are rather investigations by the Court into the conduct of one of its officers. Not being intended to inflict punishment, [they are] in no sense a criminal prosecution. Accordingly, there is neither a plaintiff nor

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

a prosecutor therein. [They] may be initiated by the Court *motu proprio*. *Public interest is [their] primary objective, and the real question for determination is whether or not the attorney is still a fit person to be allowed the privileges as such.* Hence, in the exercise of its disciplinary powers, the Court merely calls upon a member of the Bar to account for his actuations as an officer of the Court with the end in view of preserving the purity of the legal profession and the proper and honest administration of justice by purging the profession of members who by their misconduct have prove[n] themselves no longer worthy to be entrusted with the duties and responsibilities pertaining to the office of an attorney. x x x.²⁸ (Italics supplied)

"In administrative proceedings, only substantial evidence, i.e., that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion, is required."²⁹ Based on the documentary evidence submitted by the complainant, it appears that Atty. De Taza manifested a propensity for borrowing money, issuing bouncing checks and incurring debts which she left unpaid without any reason. The complainant even submitted a document evidencing Atty. De Taza's involvement in an *estafa* and violation of *Batas Pambansa* (B.P.) No. 22 case filed before the Office of the City Prosecutor in Angeles City (I.S. 07-J-2815-36) for drawing checks against a closed account, among other complaint-affidavits executed by her other creditors. Such conduct, while already off-putting when attributed to an ordinary person, is much more abhorrent when the same is exhibited by a member of the Bar. As a lawyer, Atty. De Taza must remember that she is not only a symbol but also an instrument of justice, equity and fairness.

"We have held that the issuance of checks which were later dishonored for having been drawn against a closed account indicates a lawyer's unfitness for the trust

and confidence reposed on her. It shows a lack of personal honesty and good moral character as to render her unworthy of public confidence. The issuance of a series of worthless checks also shows the remorseless attitude of respondent, unmindful to the deleterious effects of such act to the public interest and public order. It also manifests a lawyer's low regard to her commitment to the oath she has taken when she joined her peers, seriously and irreparably tarnishing the image of the profession she should hold in high esteem."³⁰

Atty. De Taza's actuations towards the complainant and his siblings were even worse as she had the gall to make it appear to the complainant that the proceedings before the Court can be expedited and ruled in their favor in exchange for an exorbitant amount of money. Said scheme was employed by Atty. De Taza just to milk more money from her clients. Without a doubt, Atty. De Taza's actions are reprehensible and her greed more than apparent when she even used the name of the Court to defraud her client.

When a lawyer receives money from the client for a particular purpose, the lawyer is bound to render an accounting to the client showing that the money was spent for that particular purpose. And if he does not use the money for the intended purpose, the lawyer must immediately return the money to his client.³¹ In this case, the purpose for which Atty. De Taza demanded money is baseless and non-existent. Thus, her demand should not have even been made in the first place.

Law is a noble profession, and the privilege to practice it is bestowed only upon individuals who are competent intellectually, academically and, equally important, morally. Because they are vanguards of the law and the legal system, lawyers must at all times conduct themselves, especially in their dealings with their clients and the public at large, with honesty and integrity in a manner

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

beyond reproach.”³⁷ “The Judiciary has been besieged enough with accusations of corruption and malpractice. For a member of the legal profession to further stoke the embers of mistrust on the judicial system with such irresponsible representations is reprehensible and cannot be tolerated.”³⁸

• **Emilie Sison-Barias Vs. Judge Marino E. Rubia, RTC, Branch 24, Binan, Laguna, et al.** A.M. No. RTJ-14-2388. June 10, 2014

- Public trust requires that we exact strict integrity from judges and court employees. This case emphasizes the need for members of the judiciary and those within its employ to exhibit the impartiality, prudence, and propriety that the New Code of Judicial Conduct and the Code of Conduct for Court Personnel require when dealing with parties in pending cases.

Complainant alleged that the dinner meeting set among her, respondent Pecaña, and respondent Judge Rubia took place on March 3, 2010, as indicated in the investigation report of Justice Gaerlan. The record shows that the Investigating Justice accepted the formal offer of Exhibit A, which was complainant's judicial affidavit establishing the date of the dinner as **March 3, 2010 in Café Juanita**.¹¹⁶ Complainant also alleged in her complaint that respondent Judge Rubia came from Mandarin Hotel in Makati from the Rotary Club of Makati, Southwest Chapter meeting.¹¹⁷

The testimony of Rodel and the evidence submitted by respondents alleged that the chance meeting of respondent Judge Rubia with complainant and respondent Pecaña took place on **March 10, 2010 on the side street of Burgos Circle in Bonifacio Global City, after the Rotary Club of Makati, Southwest Chapter meeting and dinner at Numa Restaurant, on their way to the parking lot.** This means that the

testimony of and the evidence presented by Rodel do not disprove the occurrence of the dinner meeting as alleged by complainant, since the meeting of the Rotary Club and the dinner meeting alleged by complainant took place on different dates.

Assuming that the alleged chance meeting between complainant and respondent Judge Rubia took place on March 10, 2010 as alleged by respondents, this does not discount the veracity of complainant's allegations. Both the Rotary Club of Makati, Southwest Chapter dinner and the dinner meeting alleged by complainant took place in the vicinity of Bonifacio Global City. This could have allowed respondent Judge Rubia ample time to travel to the dinner meeting after the meeting of the Rotary Club of Makati.

There was clearly no reason for respondent Pecaña to go out of her way to greet respondent Judge Rubia. In fact, after allegedly being repeatedly reminded that court employees should not have any dealings with litigants, respondent Pecaña should not have gone out to greet respondent Judge Rubia since she was dining with a litigant.

The odds that complainant and respondent Pecaña would meet respondent Judge Rubia by pure coincidence are highly improbable. Granted, chance meetings between persons may take place, but a chance meeting between a litigant in the company of a court employee who acceded to assisting the litigant in a case and the judge deciding that case is outside the realm of common experience. The odds of such an occurrence are, indeed, one in a million. The sheer improbability of such an occurrence already puts into question the truth of respondents' allegations.

Delay in filing of administrative complaint is not a defense

The investigation report placed particular emphasis on the eight-month period between the alleged dinner meeting and

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

the filing of the administrative complaint. The eight-month delay in the filing of the administrative complaint is of no consequence.

Delay in filing an administrative complaint should not be construed as basis to question its veracity or credibility. There are considerations that a litigant must think about before filing an administrative case against judges and court personnel. This is more so for lawyers where the possibility of appearing before the judge where an administrative complaint has been filed is high.

Here, respondent Judge Rubia presided over three cases that involved complainant and her late husband's estate. He wielded an unmistakable amount of control over the proceedings.

Filing an administrative case against respondents is a time-consuming ordeal, and it would require additional time and resources that litigants would rather not expend in the interest of preserving their rights in the suit. Complainant might have decided to tread with caution so as not to incur the ire of respondent Judge Rubia for fear of the reprisal that could take place after the filing of an administrative complaint.

Judges and court personnel wield extraordinary control over court proceedings of cases filed. Thus, litigants are always cautious in filing administrative cases against judges and court personnel.

In any case, administrative offenses, including those committed by members of the bench and bar, are not subject to a fixed period within which they must be reported. If this court saw fit to penalize a member of the bench for an offense committed more than twenty years prior to the filing of the complaint, then the eight-month period cannot prejudice the complainant.

The interval between the time when the offense was committed and the time when

the offense was officially reported cannot serve as a basis to doubt the veracity of complainant's allegations.

This court's mandate to discipline members of the judiciary and its personnel is implemented by pertinent rules and statutes. Judges are disciplined based on whether their actions violated the New Code of Judicial Conduct.¹³⁵ Court personnel are also governed by the Code of Conduct for Court Personnel¹³⁶ and are appointed in accordance with the Civil Service Law, as provided for in Section 5, Article VIII of the 1987 Constitution. None of these rules for administrative discipline mandates a period within which a complaint must be filed after the commission or discovery of the offense. This court determines with finality the liability of erring members of the judiciary and its employees. The gravity of an administrative offense cannot be diminished by a delay in the filing of a complaint.

To dismiss the commission of the offense based on this eight-month period is to ignore the distinct and tangible possibility that the offense was actually committed. The commission of the offense is not contingent on the period of revelation or disclosure. To dismiss the complaint on this ground is tantamount to attaching a period of prescription to the offense, which does not apply in administrative charges.

Respondent Pecaña's actions amount to violations of the Code of Conduct for Court Personnel

"Court personnel, regardless of position or rank, are expected to conduct themselves in accordance with the strict standards of integrity and morality."¹³⁷

The complaint states that respondents were allegedly acting in favor of Atty. Noe Zarate, counsel for the opposing parties in the three cases pending in the sala of respondent Judge Rubia. Because of respondents' actions, complainant and all who will be made aware of the events of

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

this case will harbor distrust toward the judiciary and its processes. For this alone, respondents should be held administratively liable.

For respondent Pecaña, the fact that she allowed herself to be placed in a position that could cause suspicion toward her work as a court personnel is disconcerting.

As a court employee, respondent Pecaña should have known better than to interact with litigants in a way that could compromise the confidence that the general public places in the judiciary. Respondent Pecaña should have refused to meet with complainant in her home. She should have refused any other form of extended communication with complainant, save for those in her official capacity as a Data Encoder of the court. This continued communication between complainant and respondent Pecaña makes her culpable for failure to adhere to the strict standard of propriety mandated of court personnel.

Respondent Pecaña admitted to meeting with complainant several times, despite the former's knowledge of the pendency of cases in the court where she is employed and in addition to the text messages exchanged between them. She had a duty to sever all forms of communication with complainant or to inform her superiors or the proper authority of complainant's attempts to communicate with her. Respondent Pecaña failed to do so. Instead, she continued to communicate with complainant, even to the extent of advising complainant against filing an administrative case against her and respondent Judge Rubia.

Respondent Judge Rubia committed gross violations of the New Code of Judicial Conduct

By meeting a litigant and advising her to talk to opposing counsel, respondent Judge Rubia violated several canons of the New Code of Judicial Conduct.

Respondent Judge Rubia failed to act in a

manner that upholds the dignity mandated by his office. He was already made aware of the impropriety of respondent Pecaña's actions by virtue of her admissions in her comment. At the time of the referral of the complaint to the Office of the Court Administrator, respondent Judge Rubia was already the Executive Judge of Branch 24 of the Regional Trial Court of Biñan, Laguna.¹⁴⁰ As a judge, he had the authority to ensure that all court employees, whether or not they were under his direct supervision, act in accordance with the esteem of their office.

Respondent Pecaña even alleged that respondent Judge Rubia made several warnings to all court employees not to intercede in any case pending before any court under his jurisdiction as Executive Judge.¹⁴¹ However, nothing in the record shows that respondent Judge Rubia took action *after being informed of respondent Pecaña's interactions with a litigant*, such as ascertaining her actions, conducting an inquiry to admonish or discipline her, or at least reporting her actions to the Office of the Court Administrator.

For this failure alone, respondent Judge Rubia should be held administratively liable.

Canon 2 of the Code of Judicial Conduct requires a judge to avoid not only impropriety but also the mere appearance of impropriety in **all activities**.

Respondent Judge Rubia clearly failed to live up to the standards of his office. By participating in the dinner meeting and by failing to admonish respondent Pecaña for her admitted impropriety, respondent Judge Rubia violated Canons 1 and 2 of the New Code of Judicial Conduct.

Canon 1 INDEPENDENCE

Judicial Independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

independence in both its individual and institutional aspects.

Section 1. Judges shall exercise the judicial function independently on the basis of their assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influence, inducement, pressure, threat or interference, direct or indirect, from any quarter or for any reason.

Section 6. Judges shall be independent in relation to society in general and in relation to the particular parties to a dispute which he or she has to adjudicate.

Section 8. Judges shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary, which is fundamental to the maintenance of judicial independence.

CANON 2 INTEGRITY

Integrity is essential not only to the proper discharge of the judicial office but also to the personal demeanor of judges.

Section 1. Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in view of a reasonable observer.

Section 2. The behavior and conduct of judges must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

Section 3. Judges should take or initiate appropriate disciplinary measures against lawyers or court personnel for unprofessional conduct of which the judge may have become aware.

As to complainant's questioning of respondent Judge Rubia's actions in the issuance of the orders in her pending cases and the exercise of his judgment, this court agrees that complainant should resort to the appropriate judicial remedies. This, however, does not negate

the administrative liability of respondent Judge Rubia. His actions failed to assure complainant and other litigants before his court of the required "cold neutrality of an impartial judge."¹⁵⁰ Because of this, respondent Judge Rubia also violated Canon 3 of the New Code of Judicial Conduct on Impartiality:

CANON 3. IMPARTIALITY

Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.

Section 1. Judges shall perform their judicial duties without favor, bias, or prejudice.

Section 2. Judges shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.

Section 3. Judges shall, so far as is reasonable, so conduct themselves as to minimize the occasions on which it will be necessary for them to be disqualified from hearing or deciding cases.

Section 4. Judges shall not knowingly, while a proceeding is before, or could come before them, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process. Nor shall judges make any comment in public or otherwise that might affect the fair trial of any person or issue.

By meeting with complainant, respondent Judge Rubia also violated Canon 4 of the New Code of Judicial Conduct:

CANON 4. PROPRIETY

Propriety and the appearance of propriety are essential to the performance of all the activities of a judge.

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

Section 1. Judges shall avoid impropriety and the appearance of impropriety in all of their activities.

Section 2. As a subject of constant public scrutiny, judges must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, judges shall conduct themselves in a way that is consistent with the dignity of the judicial office.

Section 3. Judges shall, in their personal relations with individual members of the legal profession who practice regularly in their court, avoid situations which might reasonably give rise to the suspicion or appearance of favoritism or partiality.

Because of the meeting, and the subsequent orders issued after the meeting, respondent Judge Rubia violated the notions of propriety required of his office. Respondents have relentlessly stood by their position that the meeting was a chance encounter, and, thus, no impropriety could be attributed to the meeting itself.

Respondent Judge Rubia's actions belittled the integrity required of judges in all their dealings inside and outside the courts. For these actions, respondent Judge Rubia now lost the requisite integrity, impartiality, and propriety fundamental to his office. He cannot be allowed to remain a member of the judiciary.

• **Henry Samonte Vs. Atty. Gines Abellana**

A.C. No. 3452. June 23, 2014

A lawyer who willfully resorts to any falsehood in order to mislead the courts or his clients on the status of their causes exhibits his unworthiness to remain a member of the Law Profession. This is because he is always expected to be honest and forthright in his dealings with them. He thereby merits the condign sanction of suspension from the practice of law, if not disbarment.

In his dealings with his client and with the courts, every lawyer is expected to be

honest, imbued with integrity, and trustworthy. These expectations, though high and demanding, are the professional and ethical burdens of every member of the Philippine Bar, for they have been given full expression in the Lawyer's Oath that every lawyer of this country has taken upon admission as a *bona fide* member of the Law Profession

By the Lawyer's Oath is every lawyer enjoined not only to obey the laws of the land but also to refrain from doing any falsehood in or out of court or from consenting to the doing of any in court, and to conduct himself according to the best of his knowledge and discretion with all good fidelity as well to the courts as to his clients. Every lawyer is a servant of the Law, and has to observe and maintain the rule of law as well as be an exemplar worthy of emulation by others.⁴² It is by no means a coincidence, therefore, that honesty, integrity and trustworthiness are emphatically reiterated by the *Code of Professional Responsibility*, to wit:

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

Rule 11.02 - A lawyer shall punctually appear at court hearings.

Rule 18.04 - A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to client's request for information.

Atty. Abellana abjectly failed the expectations of honesty, integrity and trustworthiness in his dealings with Samonte as the client, and with the RTC as the trial court. He resorted to outright falsification by superimposing "0" on "4" in order to mislead Samonte into believing that he had already filed the complaint in court on June 10, 1988 as promised, instead of on June 14, 1988, the date when he had actually done so. His explanation that Samonte was himself the cause of the belated filing on account of

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

his inability to remit the correct amount of filing fees and his acceptance fees by June 10, 1988, as agreed upon, did not excuse the falsification, because his falsification was not rendered less dishonest and less corrupt by whatever reasons for filing at the later date. He ought to remember that honesty and integrity were of far greater value for him as a member of the Law Profession than his transactions with his client.

Atty. Abellana's perfidy towards Samonte did not stop there. He continued misleading Samonte in explaining his mishandling of the latter's civil case. Worse, he also foisted his dishonesty on the Court no less. To counter Samonte's accusation about his not filing the reply in the civil case, he knowingly submitted two documents as annexes of his comment during the investigation by the IBP, and represented said documents to have been part of the records of the case in the RTC. His intention in doing so was to enhance his defense against the administrative charge. But the two documents turned out to be forged and spurious, and his forgery came to be exposed because the rubber stamp marks the documents bore were not the official marks of the RTC's, as borne out by the specimens of the official rubber stamp of Branch 5 of the RTC duly certified by Atty. Geronimo V. Nazareth, the Branch Clerk of Court.⁴³ He defended his dishonesty by lamely claiming that "court personnel were authorized to accept filing of pleadings even without the usual rubber stamp."⁴⁴ In these acts, he manifested his great disrespect towards both the Court and his client.

The finding on Atty. Abellana's neglect in the handling of Samonte's case was entirely warranted. He admitted being tardy in attending the hearings of the civil case. He filed the formal offer of evidence in behalf of his client way beyond the period to do so, a fact that he could not deny because the RTC Judge had himself expressly noted the belated filing in the order issued in the case. Atty. Abellana was fortunate that the RTC Judge

exhibited some tolerance and liberality by still admitting the belated offer of evidence in the interest of justice.

In disciplinary proceedings against lawyers, clearly preponderant evidence is required to overcome the presumption of innocence in favor of the respondent lawyers. *Preponderant evidence* means that the evidence adduced by one side is, as a whole, superior to or has greater weight than that of the other.⁴⁵ In order to determine if the evidence of one party is greater than that of the other, Section 1, Rule 133 of the *Rules of Court* instructs that the court may consider the following, namely: (a) all the facts and circumstances of the case; (b) the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony; (c) the witnesses' interest or want of interest, and also their personal credibility so far as the same may ultimately appear in the trial; and (d) the number of witnesses, although it does not mean that preponderance is necessarily with the greater number.

The complainant's evidence preponderantly established the administrative sins of Atty. Abellana. To start with, Atty. Abellana admitted superimposing the "0" on "4" but justified himself by claiming that he had done so only because the complainant had not given to him the correct amount of filing fees required. Secondly, Atty. Abellana filed a spurious document by making it appear as one actually filed in court by using a fake rubber stamp. His misdeed was exposed because the rubber stamp imprint on his document was different from that of the official rubber stamp of the trial court. He defended himself by stating that court personnel accepted papers filed in the court without necessarily using the official rubber stamp of the court. He well knew, of course, that such statement did not fully justify his misdeed. Thirdly, Atty. Abellana did not present any proof of his alleged filings,

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

like certified copies of the papers supposedly filed in court. His omission to prove his allegation on the filings conceded that he did not really file them. And, lastly, Atty. Abellana misrepresented the papers he had supposedly filed by stating that he was attaching them as Annex 8 and Annex 9 of his comment, but Annex 8 and Annex 9 turned out to be papers different from those he represented them to be.

Disciplinary proceedings against lawyers are designed to ensure that whoever is granted the privilege to practice law in this country should remain faithful to the Lawyer's Oath. Only thereby can lawyers preserve their fitness to remain as members of the Law Profession. Any resort to falsehood or deception, including adopting artifices to cover up one's misdeeds committed against clients and the rest of the trusting public, evinces an unworthiness to continue enjoying the privilege to practice law and highlights the unfitness to remain a member of the Law Profession. It deserves for the guilty lawyer stem disciplinary sanctions.

The falsehoods committed by Atty. Abellana, being aimed at misleading his client and the Court to bolster his unworthy denial of his neglect in the handling of the client's case, were unmitigated. Still, the Court must not close its eyes to the fact that Atty. Abellana actually finished presenting his client's case; and that the latter initiated the termination of Atty. Abellana's engagement as his counsel only after their relationship had been tainted with mistrust.

- **Efren T. Uy, Nelia B. Lee, Rodolfo L. Menes, et al. Vs. Judge Alan L. Flores, Presiding Judge, Regional Trial Court, Branch 7, Tubod, Lanao Del Norte**
A.M. No. RTJ-12-2332. June 25, 2014

Before us is an administrative complaint¹ for gross ignorance of the law, manifest partiality, denial of due process and conduct prejudicial to the best interest of the service against respondent Judge Alan

L. Flores.

Here, Judge Flores assumed jurisdiction over the Rule 65 petition assailing Hefti's order when he should have dismissed the petition for Gandarosa's failure to exhaust administrative remedies. An employee who questions the validity of his transfer should appeal to the Civil Service Commission per Section 26(3), Chapter 5, Subtitle A, Book V of the Administrative Code of 1987.

Another gross and patent error of Judge Flores is treating the comment of the Secretary of Finance and Commissioner of Internal Revenue as a mere scrap of paper because the comment was filed through LBC, not by personal filing or registered mail. But the established rule is that the date of delivery of pleadings to a private letter-forwarding agency is not to be considered as the date of filing thereof in court, and that in such cases, the date of actual receipt by the court, and not the date of delivery to the private carrier, is deemed the date of filing of that pleading.²³ Thus, even if the comment was filed through LBC, it cannot be considered as a mere scrap of paper. The comment was duly filed on the date it was received by the trial court.

- **Almira C. Foronda Vs. Atty. Jose L. Alvarez, Jr.** A.C. No. 9976. June 25, 2014

- At the outset, it must be stressed that "[a] lawyer, by taking the lawyer's oath, becomes a guardian of the law and an indispensable instrument for the orderly administration of justice."²³ He can be disciplined for any conduct, in his professional or private capacity, which renders him unfit to continue to be an officer of the court.²⁴ For of all classes and professions, it is the lawyer who is most sacredly bound to uphold the laws, for he is their sworn servant.²⁵

- "Disbarment of lawyers is a proceeding that aims to purge the law profession of unworthy

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

members of the bar. It is intended to preserve the nobility and honor of the legal profession."²⁶ Therefore, it is incumbent upon this Court to determine the full extent of the respondent's liability, and to impose the proper penalty therefor.

-
- It was established that the complainant engaged the professional services of the respondent. She expected the immediate filing of the petition for the nullity of her marriage after the full payment of attorney's fees on June 10, 2008. However, the respondent filed the said petition only on July 16, 2009. The respondent gave out different reasons for the delay in an attempt to exculpate himself. At the end, the respondent admitted the delay and apologized for it. It cannot be gainsaid that the complainant through her agent was diligent in following up the petition. The different excuses proffered by the respondent also show his lack of candor in his dealings with the complainant.
-
- "Once a lawyer agrees to take up the cause of a client, the lawyer owes fidelity to such cause and must always be mindful of the trust and confidence reposed in him."²⁷ "[H]e is required by the Canons of Professional Responsibility to undertake the task with zeal, care and utmost devotion."²⁸ "A lawyer who performs his duty with diligence and candor not only protects the interest of his client, he also serves the ends of justice, does honor to the bar, and helps maintain the respect of the community to the legal profession."²⁹
-
- Anent the P200,000.00 which was received by the respondent from the complainant, the respondent

argued that it was a loan and not really meant to be the latter's investment in any money-lending business. At any rate, the respondent issued 13 UCPB checks to serve as security for the alleged loan; among which, only two of said checks were honored by the drawee-bank while the rest were dishonored for having been drawn against a closed account. By reason of said dishonor, the respondent paid certain amounts in cash to the complainant as interest to the said loan. Ultimately, the respondent issued eight BDO checks as replacement for the dishonored UCPB checks. However, the BDO checks were also dishonored due to the same reason – they were drawn against a closed account.

-
- The respondent's act of issuing worthless checks is a violation of Rule 1.01 of the Code of Professional Responsibility which requires that "a lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct."³⁰ "[T]he issuance of checks which were later dishonored for having been drawn against a closed account indicates a lawyer's unfitness for the trust and confidence reposed on him, shows such lack of personal honesty and good moral character as to render him unworthy of public confidence, and constitutes a ground for disciplinary action."³¹
-
- It cannot be denied that the respondent's unfulfilled promise to settle his obligation and the issuance of worthless checks have seriously breached the complainant's trust. She went so far as to file multiple criminal cases for violation of B.P. Blg. 22 against him. "The relationship of an attorney to his client is highly fiduciary. Canon 15 of the Code of

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

Professional Responsibility provides that 'a lawyer shall observe candor, fairness and loyalty in all his dealings and transactions with his client.' Necessity and public interest enjoin lawyers to be honest and truthful when dealing with his client."³²

- All told, this Court finds that the respondent is liable for violation of Canons 15,³³ 17,³⁴ Rule 18.04,³⁵ and Rule 16.04³⁶ of the Code of Professional Responsibility. Likewise, he is also liable under Rule 1.01³⁷ thereof pursuant to our ruling in *Co v. Atty. Bernardino*.³⁸

• A.C. No. 5377. June 30, 2014

This court has the exclusive jurisdiction to regulate the practice of law. When this court orders a lawyer suspended from the practice of law, the lawyer must desist from performing all functions requiring the application of legal knowledge within the period of suspension. This includes desisting from holding a position in government requiring the authority to practice law.

The issue for our resolution is whether Atty. Baliga's motion to lift order of suspension should be granted.

We find that Atty. Baliga violated this court's order of suspension. We, therefore, suspend him further from the practice of law for six months.

Practice of law is "any activity, in or out of court, which requires the application of law, legal procedure, knowledge, training and experience."⁵⁷ It includes "[performing] acts which are characteristics of the [legal] profession"⁵⁸ or "[rendering any kind of] service [which] requires the use in any degree of legal knowledge or skill."⁵⁹

Work in government that requires the use of legal knowledge is considered practice of law. In *Cayetano v. Monsod*,⁶⁰ this court cited the deliberations of the 1986 Constitutional Commission and agreed

that work rendered by lawyers in the Commission on Audit requiring "[the use of] legal knowledge or legal talent"⁶¹ is practice of law.

The Commission on Human Rights is an independent office created under the Constitution with power to investigate "all forms of human rights violations involving civil and political rights[.]"⁶² It is divided into regional offices with each office having primary responsibility to investigate human rights violations in its territorial jurisdiction.⁶³ Each regional office is headed by the Regional Director who is given the position of Attorney VI. These powers and functions are characteristics of the legal profession. Oaths and affirmations are usually performed by members of the judiciary and notaries public⁷¹ — officers who are necessarily members of the bar.⁷² Investigating human rights complaints are performed primarily by the Commission's legal officer.⁷³ Discussing immediate courses of action and protection remedies and reviewing and approving draft resolutions of human rights cases prepared by the legal officer require the use of extensive legal knowledge.

The exercise of the powers and functions of a Commission on Human Rights Regional Director constitutes practice of law. Thus, the Regional Director must be an attorney — a member of the bar in good standing and authorized to practice law.⁷⁴ When the Regional Director loses this authority, such as when he or she is disbarred or suspended from the practice of law, the Regional Director loses a necessary qualification to the position he or she is holding. The disbarred or suspended lawyer must desist from holding the position of Regional Director.

This court suspended Atty. Baliga from the practice of law for one year on June 15, 2006, "effective immediately."⁷⁵ From the time Atty. Baliga received the court's order of suspension on July 5, 2006,⁷⁶ he has been without authority to practice

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

law. He lacked a necessary qualification to his position as Commission on Human Rights Regional Director/Attorney VI.

All told, performing the functions of a Commission on Human Rights Regional Director constituted practice of law. Atty. Baliga should have desisted from holding his position as Regional Director.

We remind the Commission on Human Rights that we have the exclusive jurisdiction to regulate the practice of law.⁸¹ The Commission cannot, by mere resolutions and other issuances, modify or defy this court's orders of suspension from the practice of law. Although the Commission on Human Rights has the power to appoint its officers and employees,⁸² it can only retain those with the necessary qualifications in the positions they are holding.

As for Atty. Baliga, we remind him that the practice of law is a "privilege burdened with conditions."⁸³ To enjoy the privileges of practicing law, lawyers must "[adhere] to the rigid standards of mental fitness, [maintain] the highest degree of morality[,] and [faithfully comply] with the rules of [the] legal profession."⁸⁴

- **Office of the Court Administrator Vs. Paz C. Capistrano, Court Stenographer III, Br. 224, Quezon City** A.M. No. P-13-3147. July 2, 2014

Before the Court is an administrative complaint¹ for dishonesty against respondent Paz P. Capistrano (Capistrano), Court Stenographer III of the Regional Trial Court of Quezon City, Branch 224 (RTC), which arose from the questionable entries found in her April and May 2009 Bundy cards.

Under OCA Circular No. 7-2003¹¹ dated January 9, 2003, it is incumbent upon every court official and employee **to truthfully and accurately** indicate the time of their arrival in and departure from office in their respective Daily Time Records (DTRs)/Bundy Cards.

jurisprudence dictates that erring court employees who falsify their DTRs are

guilty of dishonesty.¹² Further, under Rule XIV, Section 21 of the Civil Service Rules, falsification of official documents, which includes DTRs, and dishonesty are treated as grave offenses. Accordingly, the commission of these acts carries the penalty of dismissal from service with forfeiture of retirement benefits, except accrued leave credits, and perpetual disqualification from reemployment in government service.¹³

- **Mercedita de Jesus Vs. Atty. Juvy Mell Sanchez-Malit** A.C. No. 6470. July 8, 2014

- Going now into the substance of the charges against respondent, the Court finds that she committed misconduct and grievously violated her oath as a notary public.
- The important role a notary public performs cannot be overemphasized. The Court has repeatedly stressed that notarization is not an empty, meaningless routinary act, but one invested with substantive public interest. Notarization converts a private document into a public document, making it admissible in evidence without further proof of its authenticity. Thus, a notarized document is, by law, entitled to full faith and credit upon its face. It is for this reason that a notary public must observe with utmost care the basic requirements in the performance of his notarial duties; otherwise, the public's confidence in the integrity of a notarized document would be undermined.²⁰
- Where the notary public admittedly has personal knowledge of a false statement or information contained in the instrument to be notarized, yet proceeds to affix the notarial seal on it, the Court must not hesitate to discipline the notary public accordingly as the circumstances of the case may dictate. Otherwise, the integrity and sanctity of the notarization

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

process may be undermined, and public confidence in notarial documents diminished.²¹ In this case, respondent fully knew that complainant was not the owner of the mortgaged market stall. That complainant comprehended the provisions of the real estate mortgage contract does not make respondent any less guilty. If at all, it only heightens the latter's liability for tolerating a wrongful act. Clearly, respondent's conduct amounted to a breach of Canon 1 and Rules 1.01²³ and 1.02²⁴ of the Code of Professional Responsibility.

Records show that on various occasions from 2002 to 2004, respondent has notarized 22 documents that were either unsigned or lacking signatures of the parties. Technically, each document maybe a ground for disciplinary action, for it is the duty of a notarial officer to demand that a document be signed in his or her presence.²⁶

A notary public should not notarize a document unless the persons who signed it are the very same ones who executed it and who personally appeared before the said notary public to attest to the contents and truth of what are stated therein.²⁷ Thus, in acknowledging that the parties personally came and appeared before her, respondent also violated Rule 10.01²⁸ of the Code of Professional Responsibility and her oath as a lawyer that she shall do no falsehood.²⁹

• **Selection and Promotion Board, OCA Vs. Ronaldo D. Taca, Cashier I, MTC, OCC, Manila** A.M. No. P-14-3218. July 8, 2014

- Personal data sheets should be accomplished with candor and truthfulness as the information these sheets contain will be the basis of any appointment to government service. Any false entry in these documents will be considered dishonesty and shall be punishable by dismissal from service.

- This is an administrative complaint for dishonesty and falsification of public documents against Ronaldo D. Taca.

• **Dante LA Jimenez & Lauro G. Vizconde Vs. Atty. Felisberto L. Verano, Jr./Atty. Oliver O. Lozano Vs. Atty. Felisberto L. Verano, Jr.** A.C. No. 8108/A.C. No. 10299. July 15, 2014

Before this Court is the Resolution¹ of the Board of Governors of the Integrated Bar of the Philippines (IBP) finding respondent Atty. Felisberto Verano liable for improper and inappropriate conduct tending to influence and/or giving the appearance of influence upon a public official.

We emphasize at the outset that the Court may conduct its own investigation into charges against members of the bar, irrespective of the form of initiatory complaints brought before it. Thus, a complainant in a disbarment case is not a direct party to the case, but a witness who brought the matter to the attention of the Court.¹⁶ By now, it is basic that there is neither a plaintiff nor a prosecutor in disciplinary proceedings against lawyers. The real question for determination in these proceedings is whether or not the attorney is still a fit person to be allowed the privileges of a member of the bar.¹⁷

As to Atty. Lozano's withdrawal of his verified Complaint, we reiterate our ruling in *Rayos-Ombac* v. *Rayos*:

The affidavit of withdrawal of the disbarment case allegedly executed by complainant does not, in any way, exonerate the respondent. A case of suspension or disbarment may proceed regardless of interest or lack of interest of the complainant. What matters is whether, on the basis of the facts borne out by the record, the charge of deceit and grossly immoral conduct has been duly proven x x x. The complainant or the person who called the attention of the court to the attorney's alleged misconduct is in no sense a party, and has generally no interest in the outcome except as all good citizens may have in the proper

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

administration of justice. **Hence, if the evidence on record warrants, the respondent may be suspended or disbarred despite the desistance of complainant or his withdrawal of the charges.**¹⁸

After a careful review of the records, we agree with the IBP in finding reasonable grounds to hold respondent administratively liable. Canon 13, the provision applied by the Investigating Commissioner, 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." We believe that other provisions in the Code of Professional Responsibility likewise prohibit acts of influence-peddling not limited to the regular courts, but even in all other venues in the justice sector, where respect for the rule of law is at all times demanded from a member of the bar.

During the mandatory hearing conducted by the Committee on Bar Discipline, respondent stated that the PDEA refused to release his clients unless it received a direct order from the DOJ Secretary. This refusal purportedly impelled him to take more serious action. Respondent likewise stated that his "experience with Secretary Gonzales is, he is very open;" and that "because of my practice and well, candidly I belong also to a political family, my father was a Congressman. So, he (Gonzalez) knows of the family and he knows my sister was a Congresswoman of Pasay and they were together in Congress. In other words, I am not a complete stranger to him."²⁰ Upon questioning by Commissioner Rico A. Limpingo, respondent admitted that he was personally acquainted with the Secretary; however, they were not that close.²¹

These statements and others made during the hearing establish respondent's admission that 1) he personally approached the DOJ Secretary despite the fact that the case was still pending before

the latter; and 2) respondent caused the preparation of the draft release order on official DOJ stationery despite being unauthorized to do so, with the end in view of "expediting the case."

The way respondent conducted himself manifested a clear intent to gain special treatment and consideration from a government agency. This is precisely the type of improper behavior sought to be regulated by the codified norms for the bar. Respondent is duty-bound to actively avoid any act that tends to influence, or *may be seen to influence*, the outcome of an ongoing case, lest the people's faith in the judicial process is diluted.

The primary duty of lawyers is not to their clients but to the administration of justice. To that end, their clients' success is wholly subordinate. The conduct of a member of the bar ought to and must always be scrupulously observant of the law and ethics. *Any means, not honorable, fair and honest which is resorted to by the lawyer, even in the pursuit of his devotion to his client's cause, is condemnable and unethical.*²²

Rule 1.02 states: "A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system." Further, according to Rule 15.06, "a lawyer shall not state or imply that he is able to influence any public official, tribunal or legislative body." The succeeding rule, Rule 15.07, mandates a lawyer "to impress upon his client compliance with the laws and the principles of fairness."

Zeal and persistence in advancing a client's cause must always be within the bounds of the law.²³ A self-respecting independence in the exercise of the profession is expected if an attorney is to remain a member of the bar. In the present case, we find that respondent fell short of these exacting standards. Given the import of the case, a warning is a mere slap on the wrist that would not serve as commensurate penalty for the

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

offense.

• **Raul M. Francia Vs. Atty. Reynaldo V. Abdon** A.C. No. 10031. July 23, 2014

- Canon 7 of the Code of Professional Responsibility mandates that a "lawyer shall at all times uphold the integrity and dignity of the legal profession." For, the strength of the legal profession lies in the dignity and integrity of its members.³⁵ It is every lawyer's duty to maintain the high regard to the profession by staying true to his oath and keeping his actions beyond reproach.
- Also, the respondent, as a member of the legal profession, has a further responsibility to safeguard the dignity of the courts which the public perceives as the bastion of justice. He must at all times keep its good name untarnished and not be instrumental to its disrepute.

A strong and independent judiciary is one of the key elements in the orderly administration of justice. It holds a revered status in the society as the public perceives it as the authority of what is proper and just, and abides by its pronouncements. Thus, it must keep its integrity inviolable and this entails that the members of the judiciary be extremely circumspect in their actions, whether in their public or personal dealings. Nonetheless, the duty to safeguard the good name of the judiciary is similarly required from all the members of the legal profession. The respondent, however, compromised the integrity of the judiciary by his association with a scoundrel who earns a living by dishonoring the court and maliciously imputing corrupt motives on its members.

- The Court reiterates its directive to the members of the Bar to be mindful of the sheer responsibilities that attach to their profession. They must maintain high standards of legal proficiency, as well as morality including honesty, integrity and fair

dealing. For, they are at all times subject to the scrutinizing eye of public opinion and community approbation. Needless to state, those whose conduct – both public and private – fails this scrutiny would have to be disciplined and, after appropriate proceedings, penalized accordingly.³⁸

• **Emerita B. Mahilom Vs. Atty. Samuel SM. Lezama** A.C. No. 10450. July 30, 2014

This administrative complaint¹ filed by Emerita B. Mahilom (complainant) seeks the disbarment of Atty. Samuel SM. Lezama (respondent), a commissioned notary public and practicing lawyer in San Carlos City, Negros Occidental, for notarizing a 'Deed of Donation' in the absence of one of the affiants.

The Court agrees with and sustains the IBP's finding that the official record from the Bureau of Immigration showing that Jennifer never traveled to the Philippines in the year 2006 substantially established that indeed she could not have personally appeared before the respondent when he notarized the deed of donation on May 24, 2006. Certainly, the conclusive import of the contents of such certification cannot be overcome by the respondent's mere counter-allegations unsupported by any corroborative proof.

Section 1 of Public Act No. 2103, or the Notarial Law mandates that affiants must personally appear to the notary public, viz:

Sec. 1. (a) The acknowledgement shall be before a notary public or an officer duly authorized by law of the country to take acknowledgements of instruments or documents in the place where the act is done. The notary public or the officer taking the acknowledgement shall certify that the person acknowledging the instrument or document is known to him and that he is the same person who executed it, acknowledged that the same is his free act and deed. The certificate shall be made under the official seal, if he is required by law to keep a seal, and if

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

not, his certificate shall so state.

Corollary, under Section 2(b) of Rule IV of the Rules on Notarial Practice of 2004, a commissioned notary public is enjoined from performing a notarial act unless the affiant is: (1) in his presence at the time of the notarization; **and** (2) personally known to him or otherwise identified by him through competent evidence of identity as defined by these Rules.

The purpose of the rule was emphasized in *Angeles v. Ibañez*,¹³ thus:

The physical presence of the affiants enables the notary public to verify the genuineness of the signatures of the acknowledging parties and to ascertain that the document is the parties' free act and deed.

An act which contravenes the foregoing guidelines is in violation of Rule 1.01, Canon 1¹⁶ of the Code of Professional Responsibility and the Notarial Law,¹⁷ which the respondent culpably committed when he notarized the 'Deed of Donation' in the absence of one of the affiants.

It must be emphasized that the public and the courts accord conclusiveness of due execution in notarized documents. By affixing his signature and notarial seal on the instrument, the respondent misled the public that Jennifer personally appeared before him and attested to the truth and veracity of the contents of the deed when in fact she did not. Such misconduct can also usher in precarious legal consequences should the deed of donation later on spawn court intervention.¹⁸

- **Jose Allan Tan Vs. Pedro S. Diamante** A.C. No. 7766. August 5, 2014

For the Court's resolution is an administrative Complaint¹ for disbarment dated February 1, 2008 filed by complainant Jose Allan Tan (complainant) against respondent Pedro S. Diamante (respondent), charging him of violating the Code of Professional Responsibility (CPR) and the lawyer's oath for fabricating

and using a spurious court order, and for failing to keep his client informed of the status of the case.

Under Rule 18.04, Canon 18 of the CPR, it is the lawyer's duty to keep his client constantly updated on the developments of his case as it is crucial in maintaining the latter's confidence, to wit:

CANON 18 – A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

Rule 18.04 – A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to client's request for information.

As an officer of the court, it is the duty of an attorney to inform his client of whatever important information he may have acquired affecting his client's case. He should notify his client of any adverse decision to enable his client to decide whether to seek an appellate review thereof. Keeping the client informed of the developments of the case will minimize misunderstanding and loss of trust and confidence in the attorney. The lawyer should not leave the client in the dark on how the lawyer is defending the client's interests.²² In this connection, the lawyer must constantly keep in mind that his actions, omissions, or nonfeasance would be binding upon his client. Concomitantly, the lawyer is expected to be acquainted with the rudiments of law and legal procedure, and a client who deals with him has the right to expect not just a good amount of professional learning and competence but also a whole-hearted fealty to the client's cause.²³

In the case at bar, records reveal that as of August 14, 2007, respondent already knew of the dismissal of complainant's partition case before the RTC. Despite this fact, he never bothered to inform complainant of such dismissal as the latter only knew of the same on August 24, 2007 when he visited the former's office. To add insult to injury, respondent was

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

inexcusably negligent in filing complainant's appeal only on September 12, 2007, or way beyond the reglementary period therefor, thus resulting in its outright dismissal. Clearly, respondent failed to exercise such skill, care, and diligence as men of the legal profession commonly possess and exercise in such matters of professional employment.²⁴

Worse, respondent attempted to conceal the dismissal of complainant's appeal by fabricating the November 9, 2007 Order which purportedly required a DNA testing to make it appear that complainant's appeal had been given due course, when in truth, the same had long been denied. In so doing, respondent engaged in an unlawful, dishonest, and deceitful conduct that caused undue prejudice and unnecessary expenses on the part of complainant. Accordingly, respondent clearly violated 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.

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,²⁵ failing in which whether in his personal or private capacity, he becomes unworthy to continue his practice of law.²⁶ A lawyer's inexcusable neglect to serve his client's interests with utmost diligence and competence as well as his engaging in unlawful, dishonest, and deceitful conduct in order to conceal such neglect should never be countenanced, and thus, administratively sanctioned.

In view of the foregoing, respondent's conduct of employing a crooked and

deceitful scheme to keep complainant in the dark and conceal his case's true status through the use of a falsified court order evidently constitutes Gross Misconduct.²⁷ His acts should not just be deemed as unacceptable practices that are disgraceful and dishonorable; they reveal a basic moral flaw that makes him unfit to practice law.

As already discussed, respondent committed acts of falsification in order to misrepresent to his client, *i.e.*, complainant, that he still had an available remedy in his case, when in reality, his case had long been dismissed for failure to timely file an appeal, thus, causing undue prejudice to the latter. To the Court, respondent's acts are so reprehensible, and his violations of the CPR are so flagrant, exhibiting his moral unfitness and inability to discharge his duties as a member of the bar. His actions erode rather than enhance the public perception of the legal profession. Therefore, in view of the totality of his violations, as well as the damage and prejudice caused to his client, respondent deserves the ultimate punishment of disbarment.

• **Chamelyn A. Agot Vs. Atty. Luis P. Rivera**
A.C. No. 8000. August 5, 2014

For the Court's resolution is a Complaint-Affidavit¹ dated August 30, 2008 filed by complainant Chamelyn A. Agot (complainant) against respondent Atty. Luis P. Rivera (respondent), charging him of violating the Code of Professional Responsibility (CPR) and the lawyer's oath for misrepresentation, deceit, and failure to account for and return her money despite several demands.

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.¹⁴ In this regard, Rule 1.01, Canon 1 of the CPR, provides:

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

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

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

In the instant case, respondent misrepresented himself as an immigration lawyer, which resulted to complainant seeking his assistance to facilitate the issuance of her US visa and paying him the amount of P350,000.00 as downpayment for his legal services. In truth, however, respondent has no specialization in immigration law but merely had a contact allegedly with Pineda, a purported US consul, who supposedly processes US visa applications for him. However, respondent failed to prove Pineda's identity considering that the photographs and e-mails he submitted were all self-serving and thus, as correctly observed by the Investigating Commissioner, bereft of any probative value and consequently cannot be given any credence. Undoubtedly, respondent's deception is not only unacceptable, disgraceful, and dishonorable to the legal profession; it reveals a basic moral flaw that makes him unfit to practice law.¹⁵

Corollary to such deception, respondent likewise failed to perform his obligations under the Contract, which is to facilitate and secure the issuance of a US visa in favor of complainant. This constitutes a flagrant violation of Rule 18.03, Canon 18 of the CPR, to wit: *chan Rob...*

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.

Under Rule 18.03, Canon 18 of the CPR, once a lawyer takes up the cause of his client, he is duty-bound to serve the latter with competence, and to attend to such

client's cause with diligence, care, and devotion whether he accepts it for a fee or for free. He owes fidelity to such cause and must always be mindful of the trust and confidence reposed upon him.¹⁶ Therefore, a lawyer's neglect of a legal matter entrusted to him by his client constitutes inexcusable negligence for which he must be held administratively liable,¹⁷ as in this case.

Furthermore, respondent violated Rules 16.01 and 16.03, Canon 16 of the CPR when he failed to refund the amount of P350,000.00 that complainant paid him, viz.: *chan Rob...*

CANON 16 – A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION.

Rule 16.01 – A lawyer shall account for all money or property collected or received for or from the client.

x x x x

Rule 16.03 – A lawyer shall deliver the funds and property of his client when due or upon demand. x x x.

Verily, the relationship between a lawyer and his client is highly fiduciary and prescribes on a lawyer a great fidelity and good faith.¹⁸ 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.¹⁹ 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. Such act is a gross violation of general morality as well as of professional ethics.²⁰

- **Josephine Jazmines Tan Vs. Judge Sibanah E. Usman, RTC, Branch 28, Catbalogan City, Samar** A.M. No. RTJ-14-2390. August 13, 2014

• As settled, an accusation of bribery

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

is easy to concoct but difficult to prove. The complainant must present a panoply of evidence in support of such an accusation. Bare allegation would not suffice to hold respondent liable.⁹ In the absence of showing direct and convincing evidence to prove the alleged bribery, respondent judge cannot be held guilty of said charge. In the instant case, no evidence was presented showing that respondent in fact accepted or received money or anything from Cui in relation to the subject cases. Neither was there any evidence to show that respondent judge unlawfully or wrongfully used his official function for his own benefit or personal gain.

-
- By merely presenting a "receipt" with a tenor that money in the amount of P250,000.00 was received by Nilda Cinco in behalf of respondent to support an accusation of bribery will not stand alone. As correctly observed by the OCA, while it may be considered as proof that indeed there was money received, it does not prove however that respondent received the same. Notably, while complainant presented the subject receipt, there was no allegation as to how she acquired the receipt and from whom she obtained said receipt. It did not help also that the due execution and authenticity of said receipt was not sufficiently established considering that the parties thereto, Mr. Cui and Ms. Cinco, swore in their affidavits and during the hearing that no money was received and that no receipt was issued thereto. Likewise, complainant, despite notice, failed to attend the hearing of the case, hence, she failed to substantiate and corroborate her claim of bribery and corruption against respondent.

Mario N. Melchor, Former Clerk of Court VI, RTC, Br. 16, Naval, Biliran (now Presiding Judge, MCTC, Calubian-San Isidro, Leyte) A.M. No. P-06-2227. August 19, 2014

By his own admission, Melchor knowingly used the court funds in his custody to defray the hospitalization expenses of his child. Regrettably though, personal problems or even medical emergencies in the family cannot justify acts of using the judiciary funds held by an accountable officer of the court.³¹ As Clerk of Court, Melchor was entrusted with delicate functions in the collection of legal fees.³² He acted as cashier and disbursement officer of the court; and was tasked to collect and receive all monies paid as legal fees, deposits, fines and dues, and controls the disbursement of the same.³³ He was designated as custodian of the court's funds and revenues, records, properties and premises, and should be liable for any loss or shortage thereof.³⁴

Court personnel tasked with collections of court funds, such as clerk of court and cash clerks, should deposit immediately with the authorized government depositories the various funds they have collected. Being the custodian of court funds and revenues, it was Melchor's primary responsibility to immediately deposit the funds received by his office with the Land Bank and not to keep the same in his custody.³⁹

By failing to properly remit the cash collections constituting public funds, Melchor violated the trust reposed in him as the disbursement officer of the Judiciary. Delayed remittance of cash collections constitutes gross neglect of duty because this omission deprives the court of interest that could have been earned if the amounts were deposited in the authorized depository bank. It should be stressed that clerks of court are required by SC Circular No. 13-92 to withdraw interest earned on deposits, and to remit the same to the account of the JDF within two (2) weeks after the end of

- **Office of the Court Administrator Vs. Atty.**

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

each quarter.⁴⁰ Delay in the remittance of court funds in the period required casts a serious doubt on the court employee's trustworthiness and integrity.

- **George T. Chua Vs. Judge Fortunito L. Madrona, Regional Trial Court, Branch 274, Parañaque City** A.M. No. RTJ-14-2394. September 1, 2014

A trial judge is not accountable for performing his judicial functions and office because such performance is a matter of public duty and responsibility. Indeed, the judge's office and duty to render and administer justice, being functions of sovereignty, should not be simply taken for granted. No administrative charge for manifest partiality, gross misconduct, and gross ignorance of the law should be brought against him for the orders issued in the due course of judicial proceedings.

This Court adopts the foregoing findings and recommendations of Justice Tijam.

The complainant's allegations against Judge Madrona arose from the following orders he had issued as the judge trying the civil case involving MBDC, namely: (1) denying MBDC's motion to dismiss; (2) denying MBDC's motion for reconsideration; and (3) granting Uniwide's motion to declare defendant in default. Yet, it is clear that such orders were Judge Madrona's resolutions of the motion to dismiss, motion for reconsideration, and motion to declare MBDC in default, and thus involved the exercise of his judicial functions. Assuming that Judge Madrona thereby erred, his errors were correctible only through available judicial remedies, not by administrative or disciplinary actions.²²

This administrative complaint against Judge Madrona is disallowed and should be summarily dismissed. To start with, no administrative recourse could supplant or pre-empt the proper exercise by the CA of its certiorari jurisdiction. Furthermore, not every error or mistake by a judge in the performance of his official duties as a judge renders him administratively liable. Indeed, no judge can be held

administratively liable for gross misconduct, ignorance of the law, or incompetence in the adjudication of cases unless his acts constituted fraud, dishonesty or corruption; or were imbued with malice or ill-will, bad faith, or deliberate intent to do an injustice.²³ These exceptions did not obtain here, for, as Justice Tijam rightly observed, MBDC did not adduce convincing evidence showing that Judge Madrona's acts were so gross or patent, deliberate and malicious; or imbued with evident bad faith; or tainted with bias or partiality.

We concur with Justice Tijam. The correction of the minutes was done by Judge Madrona under the inherent powers of his court to control its own orders and processes before they became immutable. In changing in the minutes the period stated for filing the comment and the reply from 15 days to 10 days, Judge Madrona was merely correcting the period conformably with the existing practice in his branch of granting only the shorter period of 10 days to make such filings. In that context, no bad faith should be inferred, considering that both parties were subject to the same 10-day period. Moreover, MBDC did not suffer actual prejudice from the change inasmuch as Judge Madrona had actually noted MBDC's comment, and had considered such comment in issuing his December 23, 2011 ruling.

Further, Justice Tijam's recommendation to caution Judge Madrona against allowing his court interpreter to prepare the minutes of the proceedings in advance and requiring the litigants to sign the minutes even prior to the holding of the hearing itself is well taken. Given their obvious purpose, the minutes of judicial proceedings must be accomplished after the close of such proceedings, or after the hearings have been adjourned in order to avoid conflicting entries, or even confusion. It is always essential for the minutes to give an accurate account of the proceedings in accordance with their true nature as records of the official and public

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

acts of the courts. Entries in the minutes should not anticipate the proceedings they are intended to faithfully record, for the reliability and trustworthiness of the entries could be easily compromised otherwise.

- **Jose S. Villanueva Vs. Atty. Paulino I. Saguyod, Clerk of Court VI, RTC, Branch 6, Paniqui, Tarlac** A.M. No. P-13-3102. September 8, 2014

- it appears that respondent went beyond his responsibilities when he demanded the payment of P3,000.00 from complainant. Such act violates Chapter VI, Section D, par. 1.2.12 of the 2002 Revised Manual for Clerks of Court which states that branch clerks of court who are directed by the judge to receive evidence *ex parte* shall not demand and/or receive commissioner's fees. In fact, only the amount of P500.00 may be collected pursuant to Section 21(e), Rule 141 of the Rules of Court.
-
- Time and again, we have held that clerks of court are not authorized to demand and/or receive commissioner's fees for reception of evidence *ex parte*.¹⁴ To be entitled to reasonable compensation, a commissioner must not be an employee of the court. Section D (7), Chapter IV of the Manual for Clerks of Court provides that "The Court shall allow the commissioner, other than an employee of the court, such reasonable compensation as the circumstances of the case warrant to be taxed as costs against the defeated party, or apportioned, as justice requires."¹⁵ Accordingly, respondent, as a court employee, has no authority to demand or receive any commissioner's fee.

- **Melody R. Nery Vs. Atty. Glicerio A. Sampana** A.C. No. 10196. September 9, 2014

This is a disbarment complaint filed by Melody R. Nery (Nery) against Atty.

Glicerio A. Sampana (Sampana) for failing to file the petition for adoption despite receiving his legal fees and for making Nery believe that the petition was already filed.

Acceptance of money from a client establishes an attorney-client relationship and gives rise to the duty of fidelity to the client's cause.⁸ Every case accepted by a lawyer deserves full attention, diligence, skill and competence, regardless of importance.⁹ A lawyer also owes it to the court, their clients, and other lawyers to be candid and fair.¹⁰ Thus, the Code of Professional Responsibility clearly states: *Chambers v. Bartol*

CANON 15 - A lawyer shall observe candor, fairness and loyalty in all his dealings and transactions with his client.

CANON 16 - A lawyer shall hold in trust all moneys and properties of his client that may come into his possession.

Rule 16.03 - A lawyer shall deliver the funds and property of his client when due or upon demand. x x x.

CANON 17 - A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him.

CANON 18 - A lawyer shall serve his client with competence and diligence.

Rule 18.03 - A lawyer shall not neglect a legal matter entrusted to him and his negligence in connection therewith shall render him liable.

In the present case, Sampana admitted that he received "one package fee" for both cases of annulment and adoption. Despite receiving this fee, he unjustifiably failed to file the petition for adoption and fell short of his duty of due diligence and candor to his client. Sampana's proffered excuse of waiting for the certification before filing the petition for adoption is disingenuous and flimsy. In his position paper, he suggested to Nery that if the

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

alien adopter would be married to her close relative, the intended adoption could be possible. Under the Domestic Adoption Act provision, which Sampana suggested, the alien adopter can jointly adopt a relative within the fourth degree of consanguinity or affinity of his/her Filipino spouse, and the certification of the alien's qualification to adopt is waived.¹¹

Having no valid reason not to file the petition for adoption, Sampana misinformed Nery of the status of the petition. He then conceded that the annulment case overshadowed the petition for adoption. Verily, Sampana neglected the legal matter entrusted to him. He even kept the money given him, in violation of the Code's mandate to deliver the client's funds upon demand. A lawyer's failure to return upon demand the funds held by him 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 and of the public confidence in the legal profession.¹²

- **Presiding Judge Jose L. Madrid, RTC Branch 51, Sorsogon City Vs. Atty. Juan S. Dealca** A.C. No. 7474. September 9, 2014

Complainant Presiding Judge of the Regional Trial Court has had enough of the respondent, a law practitioner, who had engaged in the unethical practice of filing frivolous administrative cases against judges and personnel of the courts because the latter filed a motion to inhibit the complainant from hearing a pending case. Hence, the complainant has initiated this complaint for the disbarment of respondent on the ground of gross misconduct and gross violation of the Code of Professional Responsibility.

I Atty. Dealca must guard against his own impulse of initiating unfounded suits

Atty. Dealca insists on the propriety of the administrative and criminal cases he filed

against judges and court personnel, including Judge Madrid. He argues that as a vigilant lawyer, he was duty bound to bring and prosecute cases against unscrupulous and corrupt judges and court personnel.¹⁵

We see no merit in Atty. Dealca's arguments.

Although the Court always admires members of the Bar who are imbued with a high sense of vigilance to weed out from the Judiciary the undesirable judges and inefficient or undeserving court personnel, any acts taken in that direction should be unsullied by any taint of insincerity or self-interest. The noble cause of cleansing the ranks of the Judiciary is not advanced otherwise. It is for that reason that Atty. Dealca's complaint against Judge Madrid has failed our judicious scrutiny, for the Court cannot find any trace of idealism or altruism in the motivations for initiating it. Instead, Atty. Dealca exhibited his proclivity for vindictiveness and penchant for harassment, considering that, as IBP Commissioner Hababag pointed out,¹⁶ his bringing of charges against judges, court personnel and even his colleagues in the Law Profession had all stemmed from decisions or rulings being adverse to his clients or his side. He well knew, therefore, that he was thereby crossing the line of propriety, because neither vindictiveness nor harassment could be a substitute for resorting to the appropriate legal remedies. He should now be reminded that the aim of every lawsuit should be to render justice to the parties according to law, not to harass them.¹⁷

The Lawyer's Oath is a source of obligations and duties for every lawyer, and any violation thereof by an attorney constitutes a ground for disbarment, suspension, or other disciplinary action.¹⁸ The oath exhorts upon the members of the Bar not to "wittingly or willingly promote or sue any groundless, false or unlawful suit." These are not mere facile words, drift and hollow, but a sacred trust

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

that must be upheld and keep inviolable.¹⁹

As a lawyer, therefore, Atty. Dealca was aware of his duty under his Lawyer's Oath not to initiate groundless, false or unlawful suits. The duty has also been expressly embodied in Rule 1.03, Canon 1 of the Code of Professional Responsibility thuswise:

Rule 1.03 – A lawyer shall not, for any corrupt motive or interest, encourage any suit or proceeding or delay any man's cause.

His being an officer of the court should have impelled him to see to it that the orderly administration of justice must not be unduly impeded. Indeed, as he must resist the whims and caprices of his clients and temper his clients' propensities to litigate,²⁰ so must he equally guard himself against his own impulses of initiating unfounded suits. While it is the Court's duty to investigate and uncover the truth behind charges against judges and lawyers, it is equally its duty to shield them from unfounded suits that are intended to vex and harass them, among other things.²¹

Moreover, Atty. Dealca must be mindful of his mission to assist the courts in the proper administration of justice. He disregarded his mission because his filing of the unfounded complaints, including this one against Judge Madrid, increased the workload of the Judiciary. Although no person should be penalized for the exercise of the right to litigate, the right must nonetheless be exercised in good faith.²² Atty. Dealca's bringing of the numerous administrative and criminal complaints against judges, court personnel and his fellow lawyers did not evince any good faith on his part, considering that he made allegations against them therein that he could not substantially prove, and are rightfully deemed frivolous and unworthy of the Court's precious time and serious consideration.

II

Atty. Dealca violated Canon 11 and Rule 11.04 of the Code of Professional Responsibility

Atty. Dealca maintains that Judge Madrid should have "in good grace inhibited himself" upon his motion to inhibit in order to preserve "confidence in the impartiality of the judiciary."³¹ However, IBP Commissioner Hababag has recommended that Atty. Dealca be sanctioned for filing the motion to inhibit considering that the motion, being purely based on his personal whims, was bereft of factual and legal bases.³²

The recommendation of IBP Commissioner Hababag is warranted.

Lawyers are licensed officers of the courts empowered to appear, prosecute and defend the legal causes for their clients. As a consequence, peculiar duties, responsibilities and liabilities are devolved upon them by law. Verily, their membership in the Bar imposes certain obligations upon them.³³

In this regard, Canon 11 and Rule 11.04 of the Code of Professional Responsibility pertinently state:

Canon 11 — A lawyer shall observe and maintain the respect due to the courts and to the judicial officers and should insist on similar conduct by others.

x x x x

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

In light of the foregoing canons, 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; otherwise, the

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

institution would be resting on a very shaky foundation.³⁴

Atty. Dealca's averment that Judge Madrid did not hear cases being handled by him directly insinuated that judges could choose the cases they heard, and could refuse to hear the cases in which hostility existed between the judges and the litigants or their counsel. Such averment, if true at all, should have been assiduously substantiated by him because it put in bad light not only Judge Madrid but all judges in general. Yet, he did not even include any particulars that could have validated the averment. Nor did he attach any document to support it.

Worth stressing, too, is that the right of a party to seek the inhibition or disqualification of a judge who does not appear to be wholly free, disinterested, impartial and independent in handling the case must be balanced with the latter's sacred duty to decide cases without fear of repression. Thus, it was incumbent upon Atty. Dealca to establish by clear and convincing evidence the ground of bias and prejudice in order to disqualify Judge Madrid from participating in a particular trial in which Atty. Dealca was participating as a counsel.³⁶ The latter's bare allegations of Judge Madrid's partiality or hostility did not suffice,³⁷ because the presumption that Judge Madrid would undertake his noble role to dispense justice according to law and the evidence and without fear or favor should only be overcome by clear and convincing evidence to the contrary.³⁸ As such, Atty. Dealca clearly contravened his duties as a lawyer as expressly stated in Canon 11 and Rule 11.04, *supra*.

- **Imelda Cato Gaddi Vs. Atty. Lope M. Velasco** A.C. No. 8637. September 15, 2014

Before us is an administrative complaint filed by Imelda Cato Gaddi (Gaddi) against Atty. Lope M. Velasco (Velasco) for violation of the 2004 Rules on Notarial Practice.

Time and again, we have reminded lawyers commissioned as notaries public

that notarization is not an empty, meaningless, and routinary act.⁶ Notarization converts a private document to a public document, making it admissible in evidence without further proof of its authenticity.⁷ A notarial document is, by law, entitled to full faith and credit upon its face; for this reason, notaries public must observe with utmost care the basic requirements in the performance of their duties.⁸

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.⁹ At the time of notarization, the signatory shall sign or affix with a thumb or mark the notary public's notarial register.¹⁰ 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.¹¹ 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.¹² A notary public is also prohibited from affixing an official signature or seal on a notarial certificate that is incomplete.¹³

In the present case, contrary to Velasco's claim that Gaddi appeared before him and presented two identification cards as proof of her identity, the notarial certificate, in rubber stamp, itself indicates: "SUBSCRIBE AND SWORN TO BEFORE ME THIS APR 22, 2010 x x x AT MAKATI CITY. AFFIANT EXHIBITING TO ME HIS/HER C.T.C. NO. _____ ISSUED AT/ON _____." ¹⁴ The unfilled spaces clearly establish that Velasco had been remiss in his duty of ascertaining the identity of the signatory to the document. Velasco did not comply with the most basic function that a notary public must do, that is, to require the presence of

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

Gaddi; otherwise, he could have ascertained that the handwritten admission was executed involuntarily and refused to notarize the document. Furthermore, Velasco affixed his signature in an incomplete notarial certificate. Velasco did not even present his notarial register to rebut Gaddi's allegations. It is presumed that evidence willfully suppressed would be adverse if produced.¹⁵

In *Isenhardt v. Real*,¹⁶ a notary public who failed to discharge his duties was meted out the penalty of revocation of his notarial commission, disqualification from being commissioned as a notary public for a period of two years, and suspension from the practice of law for one year. For notarizing a document without ascertaining the identity and voluntariness of the signatory to the document, for affixing his signature in an incomplete notarial certificate, and for dishonesty in his pleadings, Velasco failed to discharge his duties as notary public and breached Canon 1¹⁷ and Rule 1.01¹⁸ of the Code of Professional Responsibility. Considering these findings and our previous rulings,¹⁹ Velasco should not only be disqualified for two years as a notary public, he must also be suspended from the practice of law for one year.

• **Mariano R. Cristobal Vs. Atty. Ronaldo E. Renta** A.C. No. 9925. September 17, 2014

- Under the established facts, we find that respondent violated Canon 18, Rule 18.03 of the Code of Professional Responsibility.
- Canon 18 of the Code of Professional Responsibility reads:
- CANON 18 - A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.
- x x x x
- Rule 18.03 - A lawyer shall not neglect a legal matter entrusted to

him, and his negligence in connection therewith shall render him liable.

- We have held that once a lawyer agrees to handle a case, it is that lawyer's duty to serve the client with competence and diligence.⁹
- Here, it is beyond doubt that respondent breached his duty to serve complainant with diligence and neglected a legal matter entrusted to him. He himself admits that the petition for recognition was not filed, seeks forgiveness from the Court and promises not to repeat his mistake.¹⁰ Complainant also submitted official letters¹¹ from the Bureau of Immigration that indeed no such petition was filed. That Anneth Tan supposedly lost the petition for recognition and failed to inform respondent cannot absolve him of liability for it was his duty not to neglect complainant's case and handle it with diligence.
- We note that while respondent failed to refund immediately the amount paid by complainant, he nevertheless exerted earnest efforts that he eventually was able to fully repay complainant and begged complainant's forgiveness.

• **Atty. Felipe B. Almazan, Sr. Vs. Atty. Marcelo B. Suerte-Felipe** A.C. No. 7184. September 17, 2014

- As the Investigating Commissioner correctly observed, respondent, who himself admitted that he was commissioned as notary public only in the City of Pasig and the Municipalities of Taguig, Pateros, San Juan, and Mandaluyong for the years 1998-1999, could not notarize the subject document's acknowledgment in the City of Marikina, as said notarial act is beyond the jurisdiction of the

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

commissioning court, i.e., the RTC of Pasig. The territorial limitation of a notary public's jurisdiction is crystal clear from Section 11, Rule III of the 2004 Rules on Notarial Practice:²³

-
- Sec. 11. *Jurisdiction and Term* – A person commissioned as notary public may perform notarial acts in any place **within the territorial jurisdiction of the commissioning court** for a period of two (2) years commencing the first day of January of the year in which the commissioning court is made, unless either revoked or the notary public has resigned under these Rules and the Rules of Court. *(Emphasis supplied)*
-
- Said principle is equally echoed in the Notarial Law found in Chapter 12, Book V, Volume I of the Revised Administrative Code of 1917, as amended,²⁴ of which Section 240, Article II states:
-
- Sec. 240. Territorial jurisdiction. – The jurisdiction of a notary public in a province shall be **co-extensive with the province**. The jurisdiction of a notary public in the City of Manila shall be co-extensive with said city. **No notary shall possess authority to do any notarial act beyond the limits of his jurisdiction.** *(Emphases supplied)*
-
- For misrepresenting in the said acknowledgment that he was a notary public for and in the City of Marikina, when it is apparent and, in fact, uncontroverted that he was not, respondent further committed a form of falsehood which is undoubtedly anathema to the lawyer's oath. Perceptibly, said transgression also runs afoul of Rule 1.01, Canon 1 of the Code of Professional Responsibility which

provides that "[a] lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct."

- **Atty. Fortunato Pagdanganan, Jr., et al. Vs. Florentino P. Sarmiento** G.R. No. 206555. September 17, 2014

• The Issue Before the Court

-
- The essential issue for the Court's resolution is whether or not the CA erred when it found grave abuse of discretion on the part of the NLRC in absolving petitioners from liability in connection with Sarmiento's money claims notwithstanding the fact that Sarmiento's petition challenging the NLRC Decision was filed out of time.
-

The Court's Ruling

The petition is meritorious.

Under Section 4, Rule 65 of the Rules of Court (Rules), as amended by A.M. No. 07-7-12-SC, an aggrieved party has sixty (60) days from receipt of the assailed decision, order or resolution within which to file a petition for *certiorari*, viz.:

SEC. 4. *When and where to file petition.* – The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, **the petition shall be filed not latter than sixty (60) days counted from the notice of the denial of the motion.**

x x x x *(Emphasis supplied)*

In the present case, and as correctly pointed out by petitioners, the 60-day reglementary period for the purpose of filing a petition for *certiorari* should be reckoned from **January 12, 2011**, the date Atty. Borromeo, Sarmiento's then counsel of record, had the notice of the December 30, 2010 Resolution, and not

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

February 10, 2011, the date when Sarmiento was personally notified thereof. This is in consonance with the well-settled rule that if a litigant is represented by counsel, notices of all kinds, including court orders and decisions, must be served on said counsel, and notice to him is considered notice to his client.

To this end, the Court cannot give credence to Sarmiento's contention that Atty. Borromeo had been discharged as counsel even before Sarmiento received the December 30, 2010 Resolution, considering that Atty. Borromeo **never** filed a formal withdrawal of appearance prior thereto, conformably with Section 26,⁵² Rule 138 of the Rules. For his failure to observe the proper legal formalities, Atty. Borromeo remained as Sarmiento's counsel on record. Fundamental is the rule that until a counsel's dismissal or withdrawal is formally made, any court record sent to him binds the client, despite an internal arrangement between them terminating their professional relationship,⁵³ as in this case.

Besides, on June 1, 2011, Atty. Borromeo eventually filed a Manifestation with Notice of Withdrawal of Appearance⁵⁴ before the CA, thus confirming that he was, in fact, Sarmiento's legal counsel at the time he received the December 30, 2010 Resolution.⁵⁵ Accordingly, the 60-day period within which to file a petition for *certiorari* before the CA should be computed from **January 12, 2011**, the last day of which would be on **March 13, 2011**. As Sarmiento's petition was filed only on **April 7, 2011**, it was belatedly filed by twenty-five (25) days. Effectively, therefore, the CA did not acquire jurisdiction over Sarmiento's petition, hence, the NLRC Ruling could no longer be assailed.⁵⁶

- **Rebecca Marie Uy Yupangco-Nakpil Vs. Atty. Roberto L. Uy** A.C. No. 9115. September 17, 2014

• The Court's Ruling

- Rule 1.01, Canon 1 of the Code, as it is applied to the members of the

legal profession, engraves an overriding prohibition against any form of misconduct, viz.:

-
- 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 gravity of the misconduct - determinative as it is of the errant lawyer's penalty - depends on the factual circumstances of each case.
-
- Here, the Court observes that the squabble which gave rise to the present administrative case largely constitutes an internal affair, which had already been laid to rest by the parties. This is clearly exhibited by Rebecca's motion to withdraw filed in this case as well as the compromise agreement forged in Civil Case No. 04-108887 which involves the subject property's alleged disposition in violation of the subject trust agreement. As the Court sees it, his failure to comply with the demands of Rebecca - which she takes as an invocation of her rights under the subject trust agreement - as well as respondent's acts of mortgaging the subject property without the former's consent, sprung from his own assertion of the rights he believed he had over the subject property. The propriety of said courses of action eludes the Court's determination, for that matter had never been resolved on its merits in view of the aforementioned settlement. Rebecca even states in her motion to withdraw that the allegations she had previously made arose out of a

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

"misapprehension of the real facts surrounding their dispute" and even adds that respondent "had fully explained to [her] the real nature and extent of her inheritance x x x to her entire satisfaction," leading her to state that she is "now fully convinced that [her] complaint has no basis in fact and in law."²⁵ Accordingly, with the admitted misstatement of facts, the observations of the Investigating Commissioner, as adopted by the IBP, hardly hold water so as to support the finding of "serious misconduct" which would warrant its recommended penalty.

-
- Be that as it may, the Court, nonetheless, finds that respondent committed some form of misconduct by, as admitted, mortgaging the subject property, notwithstanding the apparent dispute over the same. Regardless of the merits of his own claim, respondent should have exhibited prudent restraint becoming of a legal exemplar. He should not have exposed himself even to the slightest risk of committing a property violation nor any action which would endanger the Bar's reputation. Verily, members of the Bar are 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 fidelity, honesty, and integrity of the legal profession.²⁶ By no insignificant measure, respondent blemished not only his integrity as a member of the Bar, but also that of the legal profession. In other words, his conduct fell short of the exacting standards expected of him as a guardian of law and justice. Although to a lesser extent as compared to what has been ascribed by the IBP, the Court still

holds respondent guilty of violating Rule 1.01, Canon 1 of the Code.

- **CF Sharp Crew Management Incorporated Vs. Nicolas C. Torres** A.C. No. 10438. September 23, 2014

- It is fundamental that the relationship between a lawyer and his client is highly fiduciary and ascribes to a lawyer a great degree of fidelity and good faith.²⁴ 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.²⁵ This is the standard laid down by Rules 16.01 and 16.03, Canon 16 of the CPR, which read:
 -
 - CANON 16 – A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION.
 -
 - Rule 16.01 – A lawyer shall account for all money or property collected or received for or from the client.
 -
 - Rule 16.03 – A lawyer shall deliver the funds and property of his client when due or upon demand. x x x.
 -
 - In the foregoing light, it has been held that a lawyer's failure to return upon demand the funds held by him on behalf of his client gives rise to the presumption that he has appropriated the same for his own use in violation of the trust reposed in him by his client. Such act is a gross violation of general morality as well as of professional ethics.²⁶
 -
 - In this case, the IBP Investigating Commissioner correctly found that complainant had duly proven its charges against respondent. In particular, complainant had exposed respondent's *modus operandi* of repeatedly requesting

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

the issuance of checks purportedly for the purpose of settling seafarers' claims against the complainant's various principals, only to have such checks (except for the check in the amount of P145,650.00 issued to Delgado) deposited to an unauthorized bank account, particularly International Exchange Bank, Banawe, Quezon City Branch, under Account No. 003-10-06902-1. It is well-settled that "when a lawyer receives money from the client for a particular purpose, the lawyer is bound to render an accounting to the client showing that the money was spent for a particular purpose. And if he does not use the money for the intended purpose, the lawyer must immediately return the money to his client."²⁷ This, respondent failed to do.

-
- Clearly, respondent's acts of misappropriation constitute dishonesty, abuse of trust and confidence reposed in him by the complainant, and betrayal of his client's interests which he is duty-bound to protect.²⁸ They are contrary to the mandate of Rule 1.01, Canon 1 of the CPR which provides that "[a] lawyer shall not engage in unlawful, dishonest, immoral, or deceitful conduct." Such malfeasance is not only unacceptable, disgraceful, and dishonorable to the legal profession; it also reveals a basic moral flaw that makes him unfit to practice law.²⁹
- As already discussed, respondent's conduct of misappropriating complainant's money has made him unfit to remain in the legal profession. He has definitely fallen below the moral bar when he engaged in deceitful, dishonest, unlawful, and grossly immoral acts.³² As a member of the Bar, he is 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 in him by the public in the fidelity, honesty, and integrity of the legal profession.³³ Membership in the legal profession is a privilege, and whenever it is made to appear that an attorney is no longer worthy of the trust and confidence of his clients and the public, it becomes not only the right but also the duty of the Court to withdraw the same,³⁴ as in this case. In view of the foregoing, respondent deserves the ultimate penalty of disbarment from the practice of law.

- **Re: Allegations made under oath at the Senate Blue Ribbon Committee hearing held on September 26, 2013 Against Associate Justice Gregory S. Ong, Sandiganbayan** A.M. No. SB-14-21-J. September 23, 2014 Separate Concurring Opinion **J. Brion, J. Jardeleza** Concurring and Dissenting Opinion **J. Bersamin, J. Perez, J. Reyes** Concurring Opinion **J. Leonen**

This administrative complaint was filed by the Court *En Banc* after investigation into certain allegations that surfaced during the Senate Blue Ribbon Committee Hearing indicated *prima facie* violations of the Code of Judicial Conduct by an Associate Justice of the Sandiganbayan. The investigation was conducted *motu proprio* pursuant to the Court's power of administrative supervision over members of the Judiciary.¹

Respondent thus stands accused of gross misconduct, partiality and corruption or bribery *during* the pendency of the Kevlar case, and impropriety on account of his dealing and socializing with Napoles after her acquittal in the said case. Additionally, respondent failed to disclose in his September 26, 2013 letter to Chief Justice Sereno that he had actually visited Napoles at her office in 2012, as he vehemently denied having

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

partied with or attended any social event hosted by her.

Misconduct is 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; while "gross" has been defined as "out of all measure beyond allowance; flagrant; shameful; such conduct as is not to be excused."¹² We agree with Justice Sandoval-Gutierrez that respondent's association with Napoles during the pendency and after the promulgation of the decision in the Kevlar case resulting in her acquittal, constitutes gross misconduct notwithstanding the absence of direct evidence of corruption or bribery in the rendition of the said judgment.

Bribery is committed when a public officer agrees to perform an act in connection with the performance of official duties in consideration of any offer, promise, gift or present received.¹⁴ A judge who extorts money from a party-litigant who has a case before the court commits a serious misconduct and this Court has condemned such act in the strongest possible terms. Particularly because it has been committed by one charged with the responsibility of administering the law and rendering justice, it quickly and surely corrodes respect for law and the courts.¹⁵

An accusation of bribery is easy to concoct and difficult to disprove. The complainant must present a panoply of evidence in support of such an accusation. Inasmuch as what is imputed against the respondent judge connotes a grave misconduct, the quantum of proof required should be more than substantial.¹⁶ Concededly, the evidence in this case is insufficient to sustain the bribery and corruption charges against the respondent. Both Luy and Sula have not witnessed respondent actually receiving money from Napoles in exchange for her acquittal in the Kevlar case. Napoles had confided to Luy her alleged bribe to respondent.

Notwithstanding the absence of direct evidence of any corrupt act by the respondent, we find credible evidence of his association with Napoles after the promulgation of the decision in the Kevlar case. The totality of the circumstances of such association strongly indicates respondent's corrupt inclinations that only heightened the public's perception of anomaly in the decision-making process. By his act of going to respondent at her office on two occasions, respondent exposed himself to the suspicion that he was partial to Napoles. That respondent was not the ponente of the decision which was rendered by a collegial body did not forestall such suspicion of partiality, as evident from the public disgust generated by the publication of a photograph of respondent together with Napoles and Senator Jinggoy Estrada. Indeed, the context of the declarations under oath by Luy and Sula before the Senate Blue Ribbon Committee, taking place at the height of the "Pork Barrel" controversy, made all the difference as respondent himself acknowledged. Thus, even in the present administrative proceeding, their declarations are taken in the light of the public revelations of what they know of that government corruption controversy, and how it has tainted the image of the Judiciary.

Respondent's act of voluntarily meeting with Napoles at her office on two occasions was grossly improper and violated Section 1, Canon 4 (Propriety) of the New Code of Judicial Conduct, which took effect on June 1, 2004.

SECTION 1. Judges shall avoid impropriety and the appearance of impropriety in all of their activities.

A judge must not only be impartial but must also appear to be impartial and that fraternizing with litigants tarnishes this appearance.²⁰ Public confidence in the Judiciary is eroded by irresponsible or improper conduct of judges. A judge must avoid all impropriety and the appearance thereof. Being the subject of constant

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

public scrutiny, a judge should freely and willingly accept restrictions on conduct that might be viewed as burdensome by the ordinary citizen.²¹

On this score, our previous pronouncements have enjoined judges to avoid association or socializing with persons who have pending cases before their court.

Judges must, at all times, be beyond reproach and should avoid even the mere suggestion of partiality and impropriety.²⁴ Canon 4 of the New Code of Judicial Conduct states that “[p]ropriety and the appearance of propriety are essential to the performance of *all* the activities of a judge.”

In this light, it does not matter that the case is no longer pending when improper acts were committed by the judge. Because magistrates are under constant public scrutiny, the termination of a case will not deter public criticisms for acts which may cast suspicion on its disposition or resolution. As what transpired in this case, respondent’s association with Napoles has unfortunately dragged the Judiciary into the “Pork Barrel” controversy which initially involved only legislative and executive officials. Worse, Napoles’ much-flaunted “contact” in the judiciary is no less than a Justice of the Sandiganbayan, our special court tasked with hearing graft cases. We cannot, by any stretch of indulgence and compassion, consider respondent’s transgression as a simple misconduct.

Regrettably, the conduct of respondent gave cause for the public in general to doubt the honesty and fairness of his participation in the Kevlar case and the integrity of our courts of justice. Before this Court, even prior to the commencement of administrative investigation, respondent was less than candid. In his letter to the Chief Justice where he vehemently denied having attended parties or social events hosted by Napoles, he failed to mention that he had in fact visited Napoles at her

office. Far from being a plain omission, we find that respondent deliberately did not disclose his social calls to Napoles. It was only when Luy and Sula testified before the Senate and named him as the “contact” of Napoles in the Sandiganbayan, that respondent mentioned of only one instance he visited Napoles (“*This is the single occasion that Sula was talking about in her supplemental affidavit x x x*”²⁷).

The Court finds that respondent, in not being truthful on crucial matters even before the administrative complaint was filed against him *motu proprio*, is guilty of Dishonesty, a violation of Canon 3 (Integrity) of the New Code of Judicial Conduct.

Dishonesty is 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.”²⁸ Dishonesty, being a grave offense, carries the extreme penalty of dismissal from the service with forfeiture of retirement benefits except accrued leave credits, and with perpetual disqualification from re-employment in government service. Indeed, dishonesty is a malevolent act that has no place in the Judiciary.²⁹

Considering that respondent is not a first time offender and the charges of gross misconduct and dishonesty are both grave offenses showing his unfitness to remain as a magistrate of the special graft court, we deem it proper to impose the supreme penalty of dismissal.

WHEREFORE, the Court finds respondent Sandiganbayan Associate Justice Gregory S. Ong **GUILTY** of **GROSS MISCONDUCT, DISHONESTY** and **IMPROPRIETY**, all in violations of the New Code of Judicial Conduct for the Philippine Judiciary, for which he is hereby **DISMISSED** from the service, with forfeiture of all retirement benefits, except accrued leave credits, if any, and with

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

prejudice to reemployment in any branch, agency or instrumentality of the government including government-owned or -controlled corporations.

- **Conrado Abe Lopez, represented by Atty. Romualdo Jubay Vs. Judge Rogelio S. Lucmayon, MTCC, Br. 1, Mandaue, Cebu City** A.M. No. MTJ-13-1837. September 24, 2014

- **The Court's Ruling**

- Based on the allegations of the complaint, the respondent's comment, and the findings of the OCA, we find that the respondent is liable for violation of Rule 5.06 of the Code of Judicial Conduct ("Code") and Impropriety.
- **Respondent Violated Rule 5.06 of the Code**
- As a general rule, a judge is prohibited from serving as executor, administrator, trustee, guardian or other fiduciary. The intent of the rule is to limit a judge's involvement in the affairs and interests of private individuals to minimize the risk of conflict with his judicial duties and to allow him to devote his undivided attention to the performance of his official functions. When a member of the bench serves as administrator of the properties of private individuals, he runs the risk of losing his neutrality and impartiality, especially when the interests of his principal conflicts with those of the litigant who comes before his court.⁸
- The only exception to this rule as set forth in Rule 5.06 is when the estate or trust belongs to, or the ward is a **member of his immediate family**, and only if his service as executor, administrator, trustee, guardian or fiduciary will not interfere with the proper performance of his judicial duties.

The Code defines "immediate family" as being limited to the spouse and relatives within the second degree of consanguinity.⁹

- In this case, since complainant clearly does not fall under respondent's "immediate family" as herein defined, the latter's appointment as the former's attorney-in-fact is not a valid exception to the rule.
- Furthermore, by serving as attorney-in-fact, the respondent not only allowed himself to be distracted from the performance of his judicial duties; he also undertook to perform all acts necessary to protect the complainant's interest. In effect, the respondent acted as the complainant's fiduciary, in direct and patent violation of the prohibition against judges.
- As held in *Ramos v. Barot*:¹⁰
- **Being and serving as an attorney-in-fact is within the purview of "other fiduciary" as used in Rule 5.06.** As a noun, "fiduciary" means "a person holding the character of a trustee, or a character analogous to that of a trustee, in respect to the trust and confidence involved in it and the scrupulous good faith and candor which it requires." A fiduciary primarily acts for another's benefit, pursuant to his undertaking as such fiduciary, in matters connected with said undertaking x x x. (Emphasis Supplied)
- As a judge who is expected to observe the ethical rules that govern judicial conduct both in public and private affairs, the respondent should have been more

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

circumspect in accepting the appointment as an attorney-in-fact of the complainant. He should be reminded that the Code of Judicial Conduct — *which, among others, prohibits members of the bench from engaging in extra-judicial activities that tends to create a conflict with their judicial duties* - must be strictly complied with.¹¹ We conclude that for violation of the rules, the respondent should be sanctioned.

Respondent is Guilty of Impropriety

On the charge of impropriety, we have repeatedly reminded members of the Judiciary to keep their conduct beyond reproach and suspicion, and to be free from any appearance of impropriety in their personal behavior, both in the discharge of their official duties and in their everyday lives.¹²

Canon II of the Code of Judicial Conduct provides:

Rule 2.00: A judge should avoid impropriety and the appearance of impropriety in all activities.

Rule 2.01: A judge should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary.

By the very nature of their work, judges should observe an exacting standard of morality and decency. For no position exacts a greater demand on the moral righteousness and uprightness of an individual than a seat in the Judiciary.¹³

In the present administrative complaint, we agree with the OCA that the respondent's acts of: (1) making the complainant sign at least two (2) documents - consisting of SPA and Waiver of Rights - without the presence of a counsel; and (2) allowing the notarization of the documents outside the presence of the executor, amount to impropriety.

While no evidence directly shows that the respondent had deceived the complainant into signing these documents, this Court cannot ignore the fact that the documents the respondent himself prepared greatly prejudiced the complainant. We also note that the Waiver of Rights benefitted the respondent and his family. As a judge who is more learned in the law than the complainant, the respondent, at the very least should have taken the appropriate steps (*e.g. advise the former to engage the services of a lawyer who could lend him unbiased legal advice regarding the legal effects of the waiver*) to avoid impropriety and the appearance of impropriety in his dealings. This step, the respondent failed to take. In these lights, the Court finds the respondent guilty of impropriety.

Petitioner's underlying theory is that the subject casino chips were in fact stolen by its employee Cabrera, then handed over to respondent's brothers, Ludwin and Deoven, for encashment at the casino; that Ludwin and Deoven played at the casino only for show and to conceal their true intention, which is to encash the chips; that respondent's claim that he owned the chips, as they were given to him in payment of services he rendered to a Chinese client, is false.

Moreover, if petitioner should stick to its theory that Cabrera stole the subject casino chips, then its failure to file a criminal case against the latter – including Ludwin and Deoven for that matter – up to this point certainly does not help to convince the Court of its position, especially considering that the supposed stolen chips represent a fairly large amount of money. Indeed, for purposes of this proceeding, there appears to be no evidence on record – other than mere allegations and suppositions – that Cabrera stole the casino chips in question; such conclusion came unilaterally from petitioner, and for it to use the same as foundation to the claim that Ludwin, Deoven and respondent are dealing in stolen chips is clearly irregular and unfair.

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

Thus, there should be no basis to suppose that the casino chips found in Ludwin's and Deoven's possession were stolen; petitioner acted arbitrarily in confiscating the same without basis. Their Joint Affidavit – which was later recanted – does not even bear such fact; it merely states that the chips came from Cabrera. If it cannot be proved, in the first place, that Cabrera stole these chips, then there is no more reason to suppose that Ludwin and Deoven were dealing in or possessed stolen goods; unless the independent fact that Cabrera stole the chips can be proved, it cannot be said that they must be confiscated when found to be in Ludwin's and Deoven's possession.

It is not even necessary to resolve whether Ludwin's and Deoven's Joint Affidavit was obtained by duress or otherwise; the document is irrelevant to petitioner's cause, as it does not suggest at all that Cabrera stole the subject casino chips. At most, it only shows that Cabrera gave Ludwin and Deoven casino chips, if this fact is true at all – since such statement has since been recanted.

The fact that Ludwin and Deoven appear to be indecisive as to who gave them the casino chips does not help petitioner at all. It cannot lead to the conclusion that Cabrera stole the chips and then gave them to the two; as earlier stated, petitioner had to prove this fact apart from Ludwin's and Deoven's claims, no matter how incredible they may seem.

Though casino chips do not constitute legal tender,²⁴ there is no law which prohibits their use or trade outside of the casino which issues them. In any case, it is not unusual – nor is it unlikely – that respondent could be paid by his Chinese client at the former's car shop with the casino chips in question; said transaction, if not common, is nonetheless not unlawful. These chips are paid for anyway; petitioner would not have parted with the same if their corresponding representative equivalent – in legal tender, goodwill, or otherwise – was not

received by it in return or exchange. Given this premise – that casino chips are considered to have been exchanged with their corresponding representative value – it is with more reason that this Court should require petitioner to prove convincingly and persuasively that the chips it confiscated from Ludwin and Deoven were indeed stolen from it; if so, any Tom, Dick or Harry in possession of genuine casino chips is presumed to have paid for their representative value in exchange therefor. If petitioner cannot prove its loss, then Article 559 cannot apply; the presumption that the chips were exchanged for value remains.

• **Rolando Viray Vs. Atty. Eugenio T. Sanicas**
A.C. No. 7337. September 29, 2014

• **Issue**

The essential issue in this case is whether the respondent is guilty of gross misconduct for his failure to promptly account to his client the funds received in the course of his professional engagement and return the same upon demand.

The Court's Ruling

"The Code of Professional Responsibility demands the utmost degree of fidelity and good faith in dealing with the moneys entrusted to lawyers because of their fiduciary relationship."¹³ Specifically, Rule 16.01 of the Code imposes upon the lawyer the duty to "account for all money or property collected or received for or from the client." Rule 16.03 thereof, on the other hand, mandates that "[a] lawyer shall deliver the funds x x x of his client when due or upon demand."

In this case, respondent on nine separate occasions from February 5, 2004 to April 30, 2004 received payments for attorney's fees and partial payments for monetary awards on behalf of complainant from spouses Lopez. But despite the number of times over close to three months he had been receiving payment, respondent

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

neither informed the complainant of such fact nor rendered an accounting thereon. It was only when an Alias Writ of Execution was issued and being implemented when complainant discovered that spouses Lopez had already given respondent the total amount of P95,000.00 as partial payment for the monetary awards granted to him by the labor tribunal.

To make matters worse, respondent withheld and refused to deliver to the complainant said amount, which he merely received on behalf of his client, even after demand. Complainant brought the matter before the *barangay*, but respondent simply ignored the same. Such failure and inordinate refusal on the part of the respondent to render an accounting and return the money after demand raises the presumption that he converted it to his own use.¹⁴ His unjustified withholding of the funds also warrants the imposition of disciplinary action against him.¹⁵

- **Alleged loss of various boxes of copy paper during their transfer from the Property Division, Office of Administrative Services to the various rooms of Philja/Release of compulsory retirement benefits under R.A. 8291 of Mr. Isidro P. Austria etc.** A.M. No. 2008-23-SC/A.M. No. 2014-025-Ret. September 30, 2014

- Before us is the administrative matter inquiring into the loss of 140 reams of long copy paper, and 40 reams of short copy paper, valued at P27,000.00, delivered to the Philippine Judicial Academy (PHILJA). The loss was criminal theft by all means.
- Also for our consideration now is the application for the release of his retirement benefits due to his intervening compulsory retirement from the service on his 65th birthday on August 17, 2012 of one of the employees under investigation.

For making false statements, committing

perjury and stealing the copy paper, Austria and Glor are guilty of grave misconduct,¹⁹ gross dishonesty, and conduct prejudicial to the best interest of the service. Their dismissal from the service is the proper penalty, with forfeiture of retirement benefits, except accrued leave credits, and perpetual disqualification from re-employment in the Government. In addition, the records of the case should be referred to the Department of Justice for investigation with a view to the filing, if warranted, of the appropriate criminal proceedings.

On August 17, 2012 and during the pendency of A.M. No. 2008-23-SC, Austria turned 65 years old and was deemed compulsorily retired from the service. He applied for retirement benefits under Republic Act No. 8291 (*The Government Service Insurance Act of 1997*), and his application was docketed as A.M. No. 2014-025-Ret. The OAS recommended on July 30, 2014 that the benefits of Austria under Republic Act No. 8291 could be paid to him by the Government Service Insurance System "subject to the usual clearance requirements." As stated, the Third Division of the Court directed the consolidation of A.M. No. 2014-025-Ret. with A.M. No. 2008-23-SC, and the Banc accepted the consolidation on September 9, 2014.

The fact that Austria meanwhile reached the compulsory retirement age did not render A.M. No. 2008-23-SC moot, let alone release him from whatever liability he had incurred while in the active service. The jurisdiction acquired by the Court continues despite his compulsory retirement. Indeed, the Court retains its jurisdiction to declare a respondent either innocent or guilty of the charge even in the extreme case of the respondent's supervening death. If innocent, the respondent receives the vindication of his name and integrity by declaring his service in the Government to be well and faithful; if guilty in anyway, he deserves the sanction just and appropriate for his administrative sin.²⁰

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

We emphasize that all court employees, being public servants in the Judiciary, must always act with a high degree of professionalism and responsibility. Their conduct must not only be characterized by propriety and decorum, but must also be in accordance with the law and court regulations. To maintain the people's respect and faith in the Judiciary, they should be upright, fair and honest. They should avoid any act or conduct that tends to diminish public trust and confidence in the courts.³⁰

- **Re: Anonymous letter-complaint on the alleged involvement and for engaging in the business of lending money at usurious rates of interest of Ms. Dolores T. Lopez, SC Chief Judicial Staff Officer, et al.** A.M. No. 2010-21-SC. September 30, 2014

We hereby resolve the anonymous complaint denouncing the moonlighting activities of the respondents by engaging in onerous money lending activities targeting the low-income workers of the Court.

Ruling of the Court

An anonymous complaint is always received with great caution, originating as it does from a source unwilling to identify himself or herself. It is suspect for that reason. But the mere anonymity of the source should not call for the outright dismissal of the complaint on the ground of its being baseless or unfounded provided its allegations can be reliably verified and

properly substantiated by competent evidence,²⁹ like public records of indubitable integrity, "thus needing no corroboration by evidence to be offered by the complainant, whose identity and integrity could hardly be material where the matter involved is of public interest,"³⁰ or the declarations by the respondents themselves in reaction to the allegations, where such declarations are, properly speaking, admissions worthy of consideration for not being self-serving.

Here, therefore, the anonymous complaint has to be dealt with, and its veracity tested with utmost care, for it points the finger of accusation at two employees of the Court for engaging in money-lending activities at unconscionable rates of interest, with low-ranking employees of the Court as their targets. That such a complaint, albeit anonymous, has been made impacts on their reputations as individuals as well as on their integrity as personnel of the Court itself. We cannot ignore the complaint, hoping that it will be forgotten, but must inquire into it and decide it despite the anonymity of the complainant. Any conduct, act or omission on the part of all those involved in the administration of justice that violates the norms of public accountability and diminishes or even just tends to diminish the faith of the people in the Judiciary cannot be countenanced.³¹ It is for this reason that all anonymous but apparently valid complaints are not quickly dismissed but are justly heard and fairly investigated and determined by this Court.

The respondents are both responsible fiduciary officers in the FMBO, the office that is in charge of all the financial transactions of the Court, including the preparation and processing of vouchers to cover the payment of salaries, allowances, office supplies, equipment and other sundry expenses, utilities, janitorial, and security services, and maintenance and other operating expenses, and the issuance of corresponding checks therefor. Indeed, the respondents discharge the delicate task of handling the payment of employees' salaries and allowances.

Did Lopez's money-lending activities render her administratively liable?

Administrative Circular No. 5 (Re: Prohibition for *All Officials and Employees of the Judiciary to Work as Insurance Agents*), dated October 4, 1988, has prohibited all officials and employees of the Judiciary from engaging directly in any private business, vocation or profession, even outside their office hours. The

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

prohibition has been at ensuring that full-time officers and employees of the courts render full-time service, for only thereby could any undue delays in the administration of justice and in the disposition of court cases be avoided.⁴⁶ The nature of the work of court employees and officials demanded their highest degree of efficiency and responsibility, but they would not ably meet the demand except by devoting their undivided time to the government service.⁴⁷ This explains why court employees have been enjoined to strictly observe official time and to devote every second or moment of such time to serving the public.⁴⁸

Although many “moonlighting” activities were themselves legal acts that would be permitted or tolerated had the actors not been employed in the public sector,⁴⁹ moonlighting, albeit not usually treated as a serious misconduct, can amount to a malfeasance in office by the very nature of the position held. In the case of Lopez, her being the Chief of the Checks Disbursement Division of the FMBO, a major office of the Court itself, surely put the integrity of the Checks Disbursement Division and the entire FMBO under so much undeserved suspicion. She ought to have refrained from engaging in money lending, particularly to the employees of the Court. We do not need to stress that she was expected to be circumspect about her acts and actuations, knowing that the impression of her having taken advantage of her position and her having abused the confidence reposed in her office and functions as such would thereby become unavoidable. There is no doubt about her onerous lending activities greatly diminishing the reputation of her office and of the Court itself in the esteem of the public.

Considering that the official and personal conduct and deportment of all the people who work for the Judiciary mirrored the image of the Court itself,⁵⁰ they should strive to comport themselves with propriety and decorum at all times, and to be above suspicion of any misdeed and

misconduct.⁵¹ Only thereby would they earn and keep the public’s respect for and confidence in the Judiciary. As a public servant, therefore, Lopez knew only too well that she was expected at all times to exhibit the highest sense of honesty and integrity

In ordering their investigation upon the anonymous complaint, the Court did not discriminate and unfairly act against the respondents

In ordering the administrative investigation of the respondents, the Court was moved only by the most laudable of purposes. To start with, the investigation would never be unfair because they would thereby be accorded the full opportunity to be heard in order to clear themselves. And, secondly, they were not being singled out because the Court has always acted upon every appropriate complaint or grievance – anonymous or not – brought against officials and employees of the Judiciary without regard to their ranks or responsibilities, including any of its sitting Members, the incumbent Justices of the third-level courts, and other active judges of the first and second levels of the courts. Only last week did the Court remove a very senior Justice of the Sandiganbayan for cause, and in his case there was not

even any formal complaint brought against him.⁶³ Verily, everyone who works in the Judiciary answers to the exacting standards of conduct in order to maintain the integrity of the Judiciary and to preserve the esteem of the public for the courts, for the very image of the Judiciary is inescapably epitomized in the official conduct and the non-official demeanor of judicial officers and court personnel. To accuse the Court of unfairness and discrimination was, therefore, censurable.

- **Office of the Court Administrator Vs. Executive Judge Owen B. Amor, RTC, Daet, Camarines Norte** A.M. No. RTJ-08-2140. October 7, 2014

- In the instant case, the OCA

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

correctly found respondent guilty of the charges against him. As aptly pointed out, respondent's failure to file a comment despite all the opportunities afforded him constituted a waiver of his right to defend himself. In the natural order of things, a man would resist an unfounded claim or imputation against him. It is generally contrary to human nature to remain silent and say nothing in the face of false accusations. As such, **respondent's silence may thus be construed as an implied admission and acknowledgement of the veracity of the allegations against him.**²⁴ Hence, the Court upholds the OCA's findings that respondent: (a) abused his authority in impounding the tricycle and exerted undue influence on the security guards of the Hall of Justice in his attempt to obstruct the investigation of Judge Contreras; (b) was discourteous in dealing with a fellow judge when the latter was merely asking for reconsideration of her detail to another station; (c) used his office and position to intervene in behalf of Atty. Venida and tolerated the latter's abusive practice as a lawyer in exchange for gold; (d) was habitually absent; and (e) gave orders to Atty. Loria to submit all petitions for extra-judicial foreclosures to him which resulted in delays in the proceedings and asked the latter to demand "grease money" from newspaper publishers in order not to be blacklisted.²⁵

- Further, the OCA properly found respondent guilty of Gross Misconduct and Insubordination for refusing to comply with the numerous directives of the Court to file a comment on the administrative complaint against him. Verily, a judge who

deliberately and continuously fails and refuses to comply with the resolution of the Court is guilty of the same.²⁶ Such willful disobedience and disregard of the directives of the Court constitute grave and serious misconduct affecting his fitness and worthiness of the honor and integrity attached to his office.²⁷ In this case, it is noteworthy that respondent was afforded several opportunities, not to mention a generous amount of time to comply with the Court's lawful orders, but he has failed and continuously refused to heed the same. This continued refusal to abide by the lawful directives issued by the Court is glaring proof that he has become disinterested to remain with the judicial system to which he purports to belong.²⁸

- Finally, the OCA correctly noted that respondent's automatic resignation due to his filing of a COC for the 2002 Barangay Elections did not divest the Court of its jurisdiction in determining his administrative liability. It is well-settled that resignation should not be used either as an escape or an easy way out to evade an administrative liability or administrative sanction.²⁹ In this light, respondent's administrative liability for his acts stands.

- **Re: Anonymous letter Vs. Judge Corazon D. Soluren, Presiding Judge, and Rabindranath A. Tuazon, Legal Researcher, both of Br. 91, Regional Trial Court, Baler Aurora** A.M. No. P-14-3217. October 8, 2014

- the OCA therefore correctly found that Tuazon, being a Legal Researcher, was not authorized to receive any settlement money from party-litigants. Neither was it shown that Judge Soluren instructed him to receive the same. Having kept the money in his

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

possession and exercised control over it, Tuzon evidently overstepped his authority and, thus, committed a form of misconduct.²⁰

As parting words, court employees like Tuzon would do well to constantly keep in mind that those in the Judiciary serve as sentinels of justice, and any act of impropriety on their part immeasurably affects its honor and dignity and the people's confidence in it. The Institution demands the best possible individuals in the service and it had never and will never tolerate nor condone any conduct which would violate the norms of public accountability, and diminish, or even tend to diminish, the faith of the people in the justice system. As such, the Court will not hesitate to rid its ranks of undesirables who undermine its efforts towards an effective and efficient administration of justice, thus tainting its image in the eyes of the public.²³

- **Domado Disomimba Sultan Vs. Atty. Casan Macabanding** A.C. No. 7919. October 8, 2014

This is an administrative complaint¹ filed on May 14, 2008 before the Office of the Bar Confidant by Domado Disomimba Sultan (complainant) against Atty. Casan Macabanding (respondent) for allegedly having notarized a falsified affidavit.

The complainant adduced preponderant evidence that his signature was indeed forged in an affidavit which the respondent notarized and submitted to the COMELEC. Consequently, the respondent should be held administratively liable for his action. **"Where the notary public is a lawyer, a graver responsibility is placed upon his shoulder by reason of his solemn oath to obey the laws and to do no falsehood or consent to the doing of any.** The Code of Professional Responsibility also commands him not to engage in unlawful, dishonest, immoral or deceitful conduct and to uphold at all times the integrity and dignity of the legal profession."²⁹ "It should be noted that a notary public's function should not be trivialized and a notary public must discharge his powers and duties which are

impressed with public interest, with accuracy and fidelity. A notary public exercises duties calling for carefulness and faithfulness. 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."³⁰ In fact, the respondent admitted that the affidavit was notarized in his office without the presence of the complainant.³¹

In *Carlito Ang v. Atty. James Joseph Gupana*,³² the respondent therein was suspended from the practice of law for one year; his notarial commission was revoked and he was also disqualified from reappointment as notary public for a period of two years for notarizing an affidavit of loss without the presence of the party acknowledging the document.

The same sanctions were imposed against the erring lawyer in *Agbulos v. Viray*,³³ where the respondent therein admitted "that not only did he prepare and notarize the subject affidavit but he likewise notarized the same without the affiant's personal appearance. He explained that he did so merely upon the assurance of his client Dollente that the document was executed by complainant."³⁴

In *Isenhardt v. Real*,³⁵ the respondent therein was subjected to similar penalties when he notarized a Special Power of Attorney (SPA) supposedly executed by the complainant. It was proven by documentary evidence that the complainant was in Germany at that time and therefore could not have appeared before the respondent to have the SPA notarized.

The complainant in *Linco v. Laceda*³⁶ filed an administrative case against the respondent notary public for notarizing a deed of donation despite the latter's knowledge that the purported donor had already passed away on an earlier date. For this reason, the respondent's notarial

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

commission was revoked and he was disqualified from being commissioned as a notary public for a period of two years. Furthermore, he was suspended from the practice of law for one year.

Thus, based on prevailing jurisprudence, the penalties meted out against a lawyer commissioned as a notary public who fails to discharge his duties as such are: the revocation of notarial commission, disqualification from being commissioned as a notary public for a period of two years, and suspension from the practice of law for one year.

- **Frumencio E. Pulgar Vs. Paul M. Resurreccion and Maricar M. Eugenio** A.M. P-09-2673. October 21, 2014

Any employee or official of the Judiciary who usurps the functions of another employee or official, or illegally exacts money from law practitioners and litigants is guilty of grave misconduct, and may be dismissed from the service even for the first offense.

- **Jean Paul V. Gillera, Suzette P. Gillera, Atty. Jillina M. Gerodias and Ibarra Barcebal Vs. Maria Consuelo Joie A. Fajardo, Sheriff IV, Regional Trial Court (RTC) Branch 93, San Pedro, Laguna** A.M. No. P-14-3237. October 21, 2014

n administrative complaint¹ was filed before the Office of the Court Administrator against Maria Consuelo Joie A. Fajardo, the Court Sheriff of Regional Trial Court, Branch 93, San Pedro, Laguna. Complainants alleged that respondent committed conduct unbecoming a court officer by her (a) non-payment of house rental fees; (b) issuance of bouncing checks; (c) falsification of a deed of absolute sale and Official Receipt No. 8010; (d) harassment; and (e) ill-gotten wealth.²

Sheriffs, our front-line representatives,²⁸ play a crucial role in our justice system, having the important task of executing our courts' final judgments.²⁹ Sheriffs must conduct themselves with integrity at all times as "once he[/she] loses the people's trust, he[/she] diminishes the people's faith in the judiciary."³⁰ Respondent's acts

failed to meet the high standards of conduct expected from the position held.

- **Atty. Alan A. Tan Vs. Elmer S. Azcueta, Process Server, Regional Trial Court, Br. 22, Imus, Cavite** A.M. No. P-14-3271. October 22, 2014

- The Court agrees with the Investigating Judge's finding that the intervals between the dates the summons were served were very lengthy. The first service was made on January 4, 2011, the second service was on February 25, 2011 after a period of 52 days. The third attempt was on April 26, 2011 after a period of 60 days and the last service was on May 27, 2011 after a period of 31 days.

- The duty of a process server is vital to the machinery of the justice system. His primary duty is to serve court notices, which precisely requires utmost care on his part by seeing to it that all notices assigned to him are duly served upon the parties. Having a heavy workload is not a compelling reason to justify failure to perform one's duties properly. Otherwise, every government employee charged with negligence and dereliction of duty would always proffer a similar excuse to escape punishment, to the prejudice of the government service.

- We are not unmindful of the widespread and flagrant practice whereby the defendants actively attempt to frustrate the proper service of summons by refusing to give their names, rebuffing request to sign for or receive documents, or eluding officers of the courts.⁵ However, although sheriffs are not expected to be sleuths and cannot be faulted when the defendants themselves engage in deception to thwart the orderly administration of justice, they must

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

be resourceful, persevering, canny and diligent in serving the process on the defendant.⁶ Although the respondent had many other cases to attend to as process server and special sheriff, still, the respondent should have exerted extra effort to effect the service of summons as possible so as not to delay the speedy administration of justice.

- **Conrado N. Que Vs. Atty. Anastacio E. Revilla, Jr.** A.C. No. 7054. November 11, 2014

For the Court's consideration is the Profound Appeal for Judicial Clemency¹ filed by Atty. Anastacio E. Revilla, Jr. (*respondent*), who seeks to be reinstated as a member of the Philippine Bar.

The Court's Ruling

We deny the present appeal.

Membership in the Bar is a privilege burdened with conditions.²⁰ 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.²¹ The same reasoning applies to reinstatement of a disbarred lawyer. When exercising its inherent power to grant reinstatement, the Court should see to it that only those who establish their present moral fitness and knowledge of the law will be readmitted to the Bar. Thus, though the doors to the practice of law are never permanently closed on a disbarred attorney, the Court owes a duty to the legal profession as well as to the general public to ensure that if the doors are opened, it is done so only as a matter of justice.²²

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.²³ Whether the applicant shall be reinstated in the Roll of Attorneys rests to a great extent on the sound

discretion of the Court.²⁴ The lawyer has to demonstrate and prove by clear and convincing evidence that he or she is again worthy of membership in the Bar. 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.²⁵

In the present case, we note that before his admission to the Bar, the respondent had demonstrated an active involvement and participation in community and church activities by joining Youth For Christ, Catechism, and Bible Study and Sharing. Likewise, upon admission to the Bar, the respondent worked as Municipal Attorney in Sta. Cruz, Marinduque rendering free legal assistance to his town mates who were in need of legal service. Thereafter, the respondent was appointed as a Municipal Administrator and had continued extending assistance to the indigent residents.

The respondent also actively engaged and participated in various community projects, through the Marinduque Jaycees, where he served as President from 1980 to 1981, and the Integrated Bar of the Philippines Marinduque Chapter, where he served as a member, Director, and President from 1982 to 1987.

In his present appeal for judicial clemency, the respondent acknowledged his indiscretions and claimed to have taken full responsibility for his misdemeanor. Unlike in his previous petitions/appeal for judicial clemency, the respondent no longer questioned the Court's decision. According to him, he has long expressed deep remorse and genuine repentance.

The respondent also claimed that the long period of his disbarment gave him sufficient time to reflect on his

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

professional conduct, to show remorse and repentance, and to realize the gravity of his mistakes. After his disbarment, the respondent continued lending assistance, and deviated his time and effort in pursuing civic and religious work that significantly contributed to his character reformation. He professed that during his almost five (5) years of disbarment, he has been an active member of the Couples for Christ, Marriage Encounter, and Knights of Columbus; and through his affiliations with these groups, he had served in the ecclesial affairs in his parish as an Extraordinary Minister for Holy Communion and a lecturer on Legal Aspect of Marriage Pre-Cana and Marriage Preparation Seminar at the Parish Church of St. Peter in Commonwealth Avenue, Quezon City.

Although the Court believes that the respondent is not inherently lacking in moral fiber as shown by his conduct prior to his disbarment, we are not convinced that he had sufficiently achieved moral reformation.

In *Rodolfo M. Bernardo v. Atty. Ismael F. Mejia*,²⁶ the Court, in deciding whether or not to reinstate Atty. Mejia, considered that 15 years had already elapsed from the time he was disbarred, which gave him sufficient time to acknowledge his infractions and to repent. The Court also took into account the fact that Atty. Mejia is already of advanced years, has long repented, and suffered enough. The Court also noted that he had made a significant contribution by putting up the Mejia Law Journal containing his religious and social writings; and the religious organization named "El Cristo Movement and Crusade on Miracle of the Heart and Mind." Furthermore, the Court considered that Atty. Mejia committed no other transgressions since he was disbarred.

Similarly in *Adez Realty, Inc. v. Court of Appeals*,²⁷ the Court granted the reinstatement of the disbarred lawyer (found to be guilty of *intercalating a material fact in a CA decision*) and

considered the period of three (3) years as sufficient time to do soul-searching and to prove that he is worthy to practice law. In that case, the Court took into consideration the disbarred lawyer's sincere admission of guilt and repeated pleas for compassion.

Also in *Valencia v. Antiniw*,²⁸ the Court reinstated Atty. Antiniw (who was found guilty of *malpractice in falsifying a notarized deed of sale and subsequently introducing the document in court*) after considering the long period of his disbarment (almost 15 years). The Court considered that during Atty. Antiniw's disbarment, he has been persistent in reiterating his apologies to the Court, has engaged in humanitarian and civic services, and retained an unblemished record as an elected public servant, as shown by the testimonials of the numerous civic and professional organizations, government institutions, and members of the judiciary.

In all these cases, the Court 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 acknowledgement of guilt.

In the present case, we are not fully convinced that the passage of more than four (4) years is sufficient to enable the respondent to reflect and to realize his professional transgressions.

We emphasize that this is the **second time** that the respondent was accused and was found guilty of gross misconduct. The respondent, in an earlier case of *Plus Builders, Inc. v. Atty. Anastacio E. Revilla, Jr.*,²⁹ was likewise found guilty of gross misconduct for committing willful and intentional falsehood before the court; misusing court procedure and processes to delay the execution of a judgment; and collaborating with non-lawyers in the

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

illegal practice of law - *mostly the same grounds on which the Decision dated December 4, 2009 (2nd disbarment) was based.* In *Plus Builders*, we granted the respondent's motion for reconsideration and reduced the penalty of suspension from the practice of law from two (2) years to six (6) months out of compassion to the respondent.

Considering the respondent's **earlier disbarment case** (and subsequent reduction of the penalty imposed as an act of clemency), and another **disbarment case against him still pending review by the Court**, we are not fully and convincingly satisfied that the respondent has already reformed. The period of five (5) years is likewise not considerably long considering the nature and perversity of the respondent's misdeeds. We believe that it is still early for the Court to consider the respondent's reinstatement.

Furthermore, we are not persuaded by the respondent's sincerity in acknowledging his guilt. While he expressly stated in his appeal that he had taken full responsibility of his misdemeanor, his previous inclination to pass the blame to other individuals, to invoke self-denial, and to make alibis for his wrongdoings, contradicted his assertion. The respondent also failed to submit proof satisfactorily showing his contrition. He failed to establish by clear and convincing evidence that he is again worthy of membership in the legal profession. We thus entertain serious doubts that the respondent had completely reformed.

As a final word, while the Court sympathizes with the respondent's unfortunate physical condition, we stress that in considering his application for reinstatement to the practice of law, the duty of the Court is to determine whether he has established moral reformation and rehabilitation, disregarding its feeling of sympathy or pity. Surely at this point, this requirement was not met. Until such time when the respondent can demonstrate to the Court that he has completely

rehabilitated himself and deserves to resume his membership in the Bar, Our decision to disbar him from the practice of law stands.

- **Daria O. Daring Vs. Atty. riz Tingalon L. Davis** A.C. No. 9395. November 12, 2014

• Our Ruling

-
- It is undisputed that complainant entered into a Retainer Agreement dated March 7, 2005 with respondent's law firm. This agreement was signed by the respondent and attached to the *rollo* of this case. And during the subsistence of said Retainer Agreement, respondent represented and defended Balageo, who was impleaded as one of the defendants in the ejectment case complainant filed before the MTCC of Baguio City. In fact, respondent filed on behalf of said Balageo an Answer with Opposition to the Prayer for the Issuance of a Writ of Preliminary Injunction dated July 11, 2005. It was only on August 26, 2005 when respondent withdrew his appearance for Balageo.
-
- Based on the established facts, it is indubitable that respondent transgressed Rule 15.03 of Canon 15 of the Code of Professional Responsibility. It provides:
-
- Rule 15.03 - A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts.
-
- "A lawyer may not, without being guilty of professional misconduct, act as counsel for a person whose interest conflicts with that of his present or former client."¹¹ The prohibition against representing conflicting interests is absolute and

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

the rule applies even if the lawyer has acted in good faith and with no intention to represent conflicting interests.¹² In *Quiambao v. Atty. Bamba*,¹³ this Court emphasized that lawyers are expected not only to keep inviolate the client's confidence, but also to avoid the appearance of treachery and double-dealing for only then can litigants be encouraged to entrust their secrets to their lawyers, which is of paramount importance in the administration of justice.¹⁴

-
- Respondent argues that while complainant is a client of Davis & Sabling Law office, her case is actually handled only by his partner Atty. Sabling. He was not privy to any transaction between Atty. Sabling and complainant and has no knowledge of any information or legal matter complainant entrusted or confided to his law partner. He thus inveigles that he could not have taken advantage of an information obtained by his law firm by virtue of the Retainer Agreement.
-
- We are not impressed. In *Hilado v. David*,¹⁵ reiterated in *Gonzales v. Atty. Cabucana, Jr.*,¹⁶ this Court held that a lawyer who takes up the cause of the adversary of the party who has engaged the services of his law firm brings the law profession into public disrepute and suspicion and undermines the integrity of justice. Thus, respondent's argument that he never took advantage of any information acquired by his law firm in the course of its professional dealings with the complainant, even assuming it to be true, is of no moment. Undeniably aware of the fact that complainant is a client of his law firm, respondent should have immediately informed both the complainant and Balageo that he,

as well as the other members of his law firm, cannot represent any of them in their legal tussle; otherwise, they would be representing conflicting interests and violate the Code of Professional Responsibility. Indeed, respondent could have simply advised both complainant and Balageo to instead engage the services of another lawyer.

- **Esther P. Magléo Vs. Presiding Judge Rowena De Juan-Quinagoran and Branch Clerk of Court Atty. Adonis Laure, both of Branch 166, Regional Trial Court, Pasig City** A.M. No. RTJ-12-2336. November 12, 2014

- *Claim of Gross Partiality for*
- *reversing an Order Granting the*
- *Demurrer to Evidence*
-
- Complainant asserts that respondent judge committed gross ignorance of the law and evident partiality when she overturned the order granting the demurrer to evidence because it would constitute as a violation to her constitutional right against double jeopardy. Complainant argues that a dismissal due to such order is considered as acquittal which bars a subsequent opening of the criminal case.
-
- This Court is convinced that respondent judge acted in accordance with the law and jurisprudence. It was the February 2, 2011 Omnibus Order²⁶ which elucidated the clear legal basis why respondent judge continued the criminal case despite the earlier order granting the demurrer to evidence. Generally, if the trial court finds that the prosecution evidence is not sufficient and grants the accused's Demurrer to Evidence, the ruling is an adjudication on the merits of the case which is tantamount to an acquittal and may no longer be appealed.²⁷

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

-
- The current scenario, however, is an exception to the general rule. The demurrer to evidence was *premature* because it was filed before the prosecution rested its case. The RTC had not yet ruled on the admissibility of the formal offer of evidence of the prosecution when complainant filed her demurrer to evidence.²⁸ Hence, respondent judge had legal basis to overturn the order granting the demurrer to evidence as there was no proper acquittal

Claim of Violation of the Code of Judicial Conduct for issuing a Bench Warrant

It must be noted that complainant was only granted provisional liberty when she applied for bail. Such provisional liberty could be taken away if she would violate any of the undertakings stated therein. One of the conditions for bail is that the accused shall appear before the proper court whenever required by the court or the Rules of Court.³⁵

As a consequence of failing to attend the trial when so required, a bench warrant was issued against complainant. A bench warrant is defined as a writ issued directly by a judge to a law-enforcement officer, especially for the arrest of a person who has been held in contempt, has disobeyed a subpoena, or has to appear for a hearing or trial.³⁶ The provision on bench warrant is expressed under Section 9, Rule 71 of the Rules of Court which states that "[w]hen a respondent released on bail fails to appear on the day fixed for the hearing, the court may issue another order of arrest or may order the bond for his appearance to be forfeited and confiscated, or both." (Underscoring supplied)

Jurisprudence dictates that the primary requisite before a bench warrant shall be issued is that the absent-party was duly informed of the hearing date but

unjustifiably failed to attend so.³⁷ As stated above, complainant was undeniably notified of the June 8, 2011 hearing but she failed to attend.

Complainant also averred that respondent judge committed erroneous conduct (1) when she issued a bench warrant without specifically stating the amount of bail bond and (2) for not *motu proprio* lifting the bail bond when complainant's son and lawyer showed their willingness to apply for bail.

According to respondent judge, the June 9, 2011 order of arrest failed to state a bail bond because complainant jumped bail by failing to appear in court for hearing on June 8, 2011. The Court finds this acceptable because when an accused fails to appear in person as required, the bond shall be declared forfeited.³⁸ Also, it is not required by the Rules of Court that the amount of new bail bond be stated in the bench warrant. The Court cannot chastise respondent judge for an act not required by the Rules. Absent any abuse of discretion, it is sufficient that the bail bond was fixed after complainant was arrested. Such would be the proper time for the judge to consider whether to increase, decrease or retain the amount of bail based on the guidelines.³⁹

Moreover, there is nothing in the Rules which mandates a judge to *motu proprio* lift the bench warrant once the accused expresses his intent to be released on bail. Without any provision to the contrary, Section 1, Rule 15 of the Rules of Court⁴⁰ governs such that a motion must be filed to seek affirmative relief. In the present case, respondent judge acted within the scope of her authority when she required complainant's son and lawyer to file an *ex parte* motion to lift the order of arrest. When the motion was filed and the prosecutor did not express any objection, respondent judge deemed it fit to impose the same amount of bail at P40,000.00. Respondent judge immediately entertained complainant's son and lawyer when they came to her branch despite her

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

scheduled hearing and as a result, complainant was released on that same day.

In the absence of a showing that the acts complained of were done with malice or intention to violate the law or disregard the Rules of Court or for some corrupt motive, they would, at best, constitute errors of judgment which do not amount to serious misconduct.⁴¹

Claim of Performing Acts Unbecoming of a Judge and Court Personnel due to the court personnel's discourtesy

Complainant claims that respondent CoC and some court personnel were disrespectful in conversing with her bondsman, her son, and her lawyer. During her arrest, one of the court personnel said "*Nadampot ninyo na ba, nadampot nyo na ba siya.*" When the bondsman visited the branch, he claimed to have been snubbed by the personnel. Also, complainant's son received an arrogant remark from the court secretary stating "*Huwag mo na ako tanungin, yun ang order ni Judge makikipagtalos ha pa e sumunod ha na lang, wala ka namang magagawa.*" On the other hand, the respondents denied that their court personnel made those rude remarks, and claimed that even assuming that those remarks were indeed made, these were justified remarks under the circumstances of the situation.⁴²

While the allegations of complainant were not fully substantiated, the Court disagrees with the respondents that disrespectful remarks made by court personnel should be tolerated and even considered "justified remarks." The respondents, and all court personnel for that matter, should be reminded that the image of the Judiciary is mirrored in the kind of conduct, official or otherwise, which the personnel within its employ display, from the judge to the lowliest clerk. Impolite language and improper tone should be avoided. Professionalism, respect for the rights of others, good

manners and right conduct are expected of all judicial officers and employees. Thus, all employees are required to preserve the Judiciary's good name and standing as a true temple of justice.⁴³ For such improper remarks, the respondents and their court personnel are admonished.

- **Gaspar Bandy Vs. Judge Jose S. Jacinto, Jr., Presiding Judge, Branch 45, and Acting Presiding Judge, Branch 46, both at Regional Trial Court, San Jose, Occidental Mindoro** A.M. No. RTJ-14-2399. November 19, 2014

- Rule 3.01, Canon 3 of the Code of Judicial Conduct mandates that a judge shall be faithful to the law and maintain professional competence. Indeed, competence and diligence are prerequisites to the due performance of judicial office.³⁶
- Everyone, especially a judge, is presumed to know the law. One who accepts the exalted position of a judge owes the public and the Court the duty to maintain professional competence at all times.³⁷
- In this case, Judge Jacinto, Jr. was directly confronted with an allegation that he arraigned De Jesus, Jr. inside his chambers. He was given the opportunity to answer, but he chose not to delve into it. Ultimately, Judge Jacinto, Jr. did not squarely face the issues being imputed against him, which was quite irregular since it was his name and his capacity as a member of the bench, that was being challenged. As aptly observed by the OCA, "the natural instinct of man impels him to resist an unfounded claim or imputation and defend himself. It is against human nature to just remain reticent and say nothing in the face of false accusations."³⁸ His silence introduces doubt in the minds of the public, which is not acceptable.

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

- Given the exacting standards required of magistrates in the application of the law and procedure, the Court finds Judge Jacinto, Jr. administratively guilty of gross ignorance of Rule 116 of the Revised Rules of Court, specifically Section 1(a) thereof requiring arraignment of an accused to be made in open court, to wit:
-
- Section 1. Arraignment and plea, how made. – (a) The accused must be arraigned before the court where the complaint or information was filed or assigned for trial. The arraignment shall be made **in open court** by the judge or clerk by furnishing the accused with a copy of the complaint or information, reading the same in the language or dialect known to him, and asking him whether he pleads guilty or not guilty. The prosecution may call at the trial witnesses other than those named in the complaint or information.
-
- *(Emphasis supplied)*
-
- The procedural steps laid down in Section 1(a) of Rule 116 are not empty rituals that a judge can take nonchalantly. Each step constitutes an integral part of that crucial stage in criminal litigation "where the issues are joined x x x and without which the proceedings cannot advance further."³⁹ ar
-
- Thus, anything less than is required by Section 1(a) of Rule 116 constitutes gross ignorance of the law.⁴⁰ There is gross ignorance of the law when the error committed by the judge was "gross or patent, deliberate or malicious."⁴¹ 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.⁴² Gross ignorance of the law or incompetence cannot be excused by a claim of good faith.⁴³

-
- The Court has impressed upon judges that they owe it to the public and the legal profession to know the very law that they are supposed to apply in a given controversy.⁴⁴ They are called upon to exhibit more than just a cursory acquaintance with statutes and procedural rules, to be conversant with the basic law, and to maintain the desired professional competence.⁴⁵ When a judge displays an utter lack of familiarity with the rules, he erodes the confidence of the public in the courts. A judge owes the public and the Court the duty to be proficient in the law and is expected to keep abreast of laws and prevailing jurisprudence. Ignorance of the law by a judge can easily be the mainspring of injustice.⁴⁶
-
- Canon 2,⁴⁷ Rule 2.01⁴⁸ and Canon 3⁴⁹ of the Code of Judicial Conduct likewise emphasize that judges, as officers of the court, have the duty to see to it that justice is dispensed with evenly and fairly. Not only must they be honest and impartial, but they must also **appear** to be honest and impartial in the dispensation of justice. Judges should make sure that their acts are circumspect and do not arouse suspicion in the minds of the public. When they fail to do so, such acts may cast doubt upon their integrity and ultimately the judiciary in general.⁵
- Here, the Court cannot fathom why the arraignment of De Jesus, Jr. was postponed from 2007 to 2011 without appropriate action coming from the court. Judge Jacinto, Jr. should have availed of known legal

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

remedies to compel De Jesus, Jr. to personally appear for his arraignment, but he did not. The appearance of leniency seemingly exhibited in favor of De Jesus, Jr. gives an impression of bias and partiality that should be addressed and corrected.

- November 25, 2014
- **Estrella R. Sanchez Vs. Atty. Nicolas C. Torres, M.D.** A.C. No. 10240. November 25, 2014

• **RULING**

- We sustain the findings and recommendations of the IBP-CBD and the IBP-Board of Governors.
- In the instant case, the existence of the loan obligation is undisputed. Sanchez was able to discharge her burden of proving that she loaned P2,200,000.00 to Atty. Torres as evidenced by the subject bank checks. Furthermore, backed by Atty. Torres' admission in his letter dated May 9, 2009, his promise to pay the amount of P2,200,000.00 in cash, as replacement for the two checks he previously issued, is more than sufficient to establish a valid obligation of Atty. Torres to Sanchez. Atty. Torres' admission of the loan he contracted and his failure to pay the same leave no room for interpretation. Likewise, other than his belated and empty claims of payment, Atty. Torres failed to discharge his burden of proving that he had indeed paid his obligation to Sanchez.
- In *Barrientos v. Atty. Libiran-Meteoro*,¹³ we held that:
- x x x [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. Lawyers are instruments for the

administration of justice and vanguards of our legal system. They are expected to maintain not only legal proficiency but also a high standard of morality, honesty, integrity and fair dealing so that the people's faith and confidence in the judicial system is ensured. They must at all times faithfully perform their duties to society, to the bar, the courts and to their clients, which include prompt payment of financial obligations. They must conduct themselves in a manner that reflect the values and norms of the legal profession as embodied in the Code of Professional Responsibility. Canon 1 and Rule 1.01 explicitly states:

- Canon 1— A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and for legal processes.
- Rule 1.01—A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.
- We also note Atty. Torres' conduct in the course of the proceedings where he repeatedly asked for extensions of time to file an answer and a motion for reconsideration, which he failed to submit, and his failure to attend the disciplinary hearings set by the IBP do not speak well of his standing as a lawyer. In *Ngayan v. Tugade*,¹⁴ we ruled that "[a lawyer's]
- failure to answer the complaint against him and his failure to appear at the investigation are evidence of his flouting resistance to lawful orders of the court and illustrate his despicency for his oath of office in violation of Section 3, Rule 138, Rules of Court."

- **Florencio A. Saladaga Vs. Atty. Arturo B. Astroga** A.C. No. 4697/A.C. No. 4728. November 25, 2014

Membership in the legal profession is a high personal privilege burdened with

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

conditions,¹ including continuing fidelity to the law and constant possession of moral fitness. Lawyers, as guardians of the law, play a vital role in the preservation of society, and a consequent obligation of lawyers is to maintain the highest standards of ethical conduct.² Failure to live by the standards of the legal profession and to discharge the burden of the privilege conferred on one as a member of the bar warrant the suspension or revocation of that privilege.

anon 1 and Rule 1.01 of the Code of Professional Responsibility 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.

Under Canon 1, a lawyer is not only mandated to personally obey the laws and the legal processes, he is moreover expected to inspire respect and obedience thereto. On the other hand, Rule 1.01 states the norm of conduct that is expected of all lawyers.²²

Any act or omission that is contrary to, prohibited or unauthorized by, 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.²³

To be “dishonest” means the disposition to lie, cheat, deceive, defraud or betray; be untrustworthy; lacking in integrity, honesty, probity, integrity in principle, fairness and straightforwardness. On the other hand, conduct that is “deceitful” means as follows:

[Having] the proclivity for fraudulent and deceptive misrepresentation, artifice or device that is used upon another who is ignorant of the true facts, to the prejudice and damage of the party imposed upon.

In order to be deceitful, the person must either have knowledge of the falsity or acted in reckless and conscious ignorance thereof, especially if the parties are not on equal terms, and was done with the intent that the aggrieved party act thereon, and the latter indeed acted in reliance of the false statement or deed in the manner contemplated to his injury.²⁴

The actions of respondent in connection with the execution of the “Deed of Sale with Right to Repurchase” clearly fall within the concept of unlawful, dishonest, and deceitful conduct. They violate Article 19 of the Civil Code. They show a disregard for Section 63 of the Land Registration Act. They also reflect bad faith, dishonesty, and deceit on respondent’s part. Thus, respondent deserves to be sanctioned.

Respondent’s breach of his oath, violation of the laws, lack of good faith, and dishonesty are compounded by his gross disregard of this Court’s directives, as well as the orders of the IBP’s Investigating Commissioner (who was acting as an agent of this Court pursuant to the Court’s referral of these cases to the IBP for investigation, report and recommendation), which caused delay in the resolution of these administrative cases.

In particular, the Court required respondent to comment on complainant’s Affidavit-Complaint in A.C. No. 4697 and Supplemental Complaint in A.C. No. 4728 on March 12, 1997 and June 25, 1997, respectively.²⁵ While he requested for several extensions of time within which to submit his comment, no such comment was submitted prompting the Court to require him in a Resolution dated February 4, 1998 to (1) show cause why he should not be disciplinarily dealt with or held in contempt for such failure, and (2) submit the consolidated comment.²⁶ Respondent neither showed cause why he should not be disciplinarily dealt with or held in contempt for such failure, nor submitted the consolidated comment.

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

When these cases were referred to the IBP and during the proceedings before the IBP's Investigating Commissioner, respondent was again required several times to submit his consolidated answer. He only complied on August 28, 2003, or more than six years after this Court originally required him to do so. The Investigating Commissioner also directed the parties to submit their respective position papers. Despite having been given several opportunities to submit the same, respondent did not file any position paper.²⁷

Respondent's disregard of the directives of this Court and of the Investigating Commissioner, which caused undue delay in these administrative cases, contravenes the following provisions of the Code of Professional Responsibility:

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.

x x x x

CANON 12 – A lawyer shall exert every effort and consider it his duty to assist in the speedy and efficient administration of justice.

x x x x

Rule 12.03 – A lawyer shall not, after obtaining extensions of time to file pleadings, memoranda or briefs, let the period lapse without submitting the same or offering an explanation for his failure to do so.

Rule 12.04 – A lawyer shall not unduly delay a case, impede the execution of a judgment or misuse court processes.

- **Philippine Association of Court Employees (PACE), Represented by its President, Atty. Virginia C. Rafael Vs. Atty. Edna M. Alibutdan-Diaz** A.C. No. 10134. November 26, 2014

- Everyone should keep in mind that

the practice of law is only a privilege. It is definitely not a right. In order to enjoy this privilege, one must show that he possesses, and continues to possess, the qualifications required by law for the conferment of such privilege.

-
- One of those requirements is the observance of honesty and candor. Candor in all their dealings is the very essence of a practitioner's honorable membership in the legal profession. Lawyers are required to act with the highest standard of truthfulness, fair play and nobility in the conduct of litigation and in their relations with their clients, the opposing parties, the other counsels and the courts. They are bound by their oath to speak the truth and to conduct themselves according to the best of their knowledge and discretion, and with fidelity to the courts and their clients.¹⁹
-
- Time and again, the Court has held that the practice of law is granted only to those of good moral character. The Bar maintains a high standard of honesty and fair dealing. Thus, lawyers must conduct themselves beyond reproach at all times, whether they are dealing with their clients or the public at large, and a violation of the high moral standards of the legal profession justifies the imposition of the appropriate penalty, including suspension and disbarment.²⁰
-
- It bears stressing that Atty. Diaz is a servant of the law and belongs to that profession which society entrusts with the administration of law and the dispensation of justice. For this, he or she is an exemplar for others to emulate and should not engage in unlawful, dishonest, immoral or deceitful conduct. Necessarily, this Court has been

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

exacting in its demand for integrity and good moral character from members of the Bar. They are always expected to uphold the integrity and dignity of the legal profession and to refrain from any act or omission which might lessen the trust and confidence reposed by the public in the fidelity, honesty, and integrity of this noble profession.²¹

-
- Atty. Diaz' delay in the liquidation of the finances of PACE; her running for re-election, including her non-admission that she ran for said election as shown not by her certificate of candidacy but by the affidavits of former PACE officers; and her involvement in the approval or passage of the questioned term-end bonus of PACE officers, including herself even though she was no longer working in the Judiciary, were definitely not the candor the Court speaks of. There was much to be desired in Atty. Diaz' actions/inactions.

• **Felipe Layos Vs. Atty. Marlito I. Villanueva**
A.C. No. 8085. December 1, 2014

-
- **The Issue Before the Court**
-
- The essential issue in this case is whether or not respondent should be held administratively liable for the acts complained of.
-

The Court's Ruling

After a judicious perusal of the records, the Court concurs with the IBP's findings, subject to the modification of the recommended penalty to be imposed upon respondent.

Under Canon 17 and Canon 18, Rules 18.03 and 18.04 of the CPR, it is the lawyer's duty to serve his client's interest with utmost zeal, candor and diligence. As such, he must keep abreast of all the developments in his client's case and

should inform the latter of the same, as it is crucial in maintaining the latter's confidence, to wit:

CANON 17 – A LAWYER OWES FIDELITY TO THE CAUSE OF HIS CLIENT AND HE SHALL BE MINDFUL OF THE TRUST AND CONFIDENCE REPOSED IN HIM.

CANON 18 – A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

x x x x

Rule 18.03 – A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection there with 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.

As an officer of the court, it is the duty of an attorney to inform his client of whatever important information he may have acquired affecting his client's case. He should notify his client of any adverse decision to enable his client to decide whether to seek an appellate review thereof. Keeping the client informed of the developments of the case will minimize misunderstanding and loss of trust and confidence in the attorney. The lawyer should not leave the client in the dark on how the lawyer is defending the client's interests. In this connection, the lawyer must constantly keep in mind that his actions, omissions, or nonfeasance would be binding upon his client. As such, the lawyer is expected to be acquainted with the rudiments of law and legal procedure, and a client who deals with him has the right to expect not just a good amount of professional learning and competence but also a whole-hearted fealty to the client's cause.²²

In the case at bar, records reveal that since missing the April 4, 2002 hearing

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

due to car trouble, respondent no longer kept track of complainant's criminal case and merely assumed that the same was already amicably settled and terminated. Thereafter, when respondent finally knew that the case was still on-going, he attended the November 15, 2005 hearing, and discovered the RTC's issuance of the June 26, 2003 Order which is prejudicial to complainant's cause. Despite such alarming developments, respondent did not immediately seek any remedy to further the interests of his client. Instead, he passively relied on the representations of the court employees that they would send him a copy of the aforesaid Order. Worse, when he finally secured a copy on April 4, 2006, it still took him over a year, or until April 21, 2007, just to move the RTC to reconsider its June 26, 2003 Order. Naturally, the RTC and the CA denied the motion for being filed way beyond the reglementary period, to the detriment of complainant. Clearly, respondent failed to exercise such skill, care, and diligence as men of the legal profession commonly possess and exercise in such matters of professional employment.²³

• **Marivic C. Vitor Vs. Caroline Zafra, etc.**

A.M. No. P-11-2917. December 2, 2014

The conviction of an employee for a violation of *Batas Pambansa Blg. 22*, a crime that involves moral turpitude, is sufficient cause for dismissal from the service. Thereby, the employee's unworthiness and lack of fitness to remain in the service of the Judiciary are exposed.

- **Raul C. Lanuza and Reynaldo C. Rasing Vs. Attys. Frankie O. Magsalin III and Pablo R. Cruz/Raul C. Lanuza and Reynaldo C. Rasing Vs. Attys. Frankie O. Magsalin III, Peter Andrew S. Go and Pablo R. Cruz** A.C. No. 7687/A.C. No. 7688. December 3, 2014

• **ISSUE**

- The vital issue for the Court's resolution is whether Attys. Magsalin, Cruz and Go should be held administratively liable based

on the allegations in the complaints.

In the cases at bench, the Court finds the evidentiary records to be inconclusive, thus, insufficient to hold the respondents liable for the acts alleged in the complaint.

Though there is a variance between the QCCPO Certifications and the Registry Return Receipts as to the dates of the CA receipt of the notices, decision and resolution by the respondents, there is no clear and convincing evidence to prove that the respondents intentionally and maliciously made it appear that they received the CA notices, decision and resolution later than the dates stated in the QCCPO Certifications. The complainants would like to impress upon the Court that the only logical explanation as to the discrepancy on the dates between the QCCPO Certifications and the Registry Return Receipts was that the respondents must have induced Calucag to alter the true date of receipt by the CA for the purpose of extending the period to file, the otherwise time-barred, motion for reconsideration. Verily, this leap of inference proffered by the complainants is merely anchored on speculation and conjecture and not in any way supported by clear substantial evidence required to justify the imposition of an administrative penalty on a member of the Bar.

Even if the postmaster's certifications were to merit serious consideration, the Court cannot avoid the legal reality that the registry return card is considered as the official CA record evidencing service by mail. This card carries the presumption that it was prepared in the course of official duties which have been regularly performed. In this sense, it is presumed to be accurate, unless clearly proven otherwise.

The Court finds merit in the respondents' argument that had Calucag stamped an inaccurate date on the registry return receipts, Postman Pecante, who witnessed and had full view of the receiving and stamping of the said registry return

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

receipts, would have called her attention to correct the same or would have refused to receive them altogether for being erroneous. Here, Postman Pecante having accepted two registry return receipts with the dates, April 10, 2007¹⁹ and July 23, 2007,²⁰ respectively, can only mean that the said postman considered the dates indicated therein to be correct and accurate.

- **Atty. Aurelio C. Angeles, Jr., Provincial Legal Officer, Bataan Capitol, Balanga City, Bataan Vs. Atty. Renato C. Bagay**
A.C. No. 8103. December 3, 2014

It appears from the records that this case stemmed from the letter,² dated June 11, 2008, submitted by Atty. Aurelio C. Angeles, Jr. (*Atty. Angeles, Jr.*), the Provincial Legal Officer of Bataan, to Hon. Remigio M. Escalada, Jr. (*Executive Judge*), Executive Judge of the Regional Trial Court of Bataan against Atty. Renato C. Bagay (*respondent*), for his alleged notarization of 18 documents at the time he was out of the country from March 13, 2008 to April 8, 2008.

The sole issue to resolve in this case is **whether the notarization of documents by the secretary of respondent while he was out of the country constituted negligence.**

The Court answers in the affirmative.

Respondent admitted in his comment and motion for reconsideration that the 18 documents were notarized under his notarial seal by his office secretary while he was out of the country. This clearly constitutes negligence considering that respondent is responsible for the acts of his secretary. Section 9 of the 2004 Rules on Notarial Practice provides that a "Notary Public" refers to any person commissioned to perform official acts under these Rules. A notary public's secretary is obviously not commissioned to perform the official acts of a notary public.

Respondent cannot take refuge in his claim that it was his secretary's act which

he did not authorize. He is responsible for the acts of the secretary which he employed. He left his office open to the public while leaving his secretary in charge. He kept his notarial seal and register within the reach of his secretary, fully aware that his secretary could use these items to notarize documents and copy his signature. Such blatant negligence cannot be countenanced by this Court and it is far from being a simple negligence. There is an inescapable likelihood that respondent's flimsy excuse was a mere afterthought and such carelessness exhibited by him could be a conscious act of what his secretary did.

Respondent must fully bear the consequence of his negligence. A person who is commissioned as a notary public takes full responsibility for all the entries in his notarial register.¹⁴ He cannot relieve himself of this responsibility by passing the buck to his secretary.

Because of the negligence of respondent, the Court also holds him liable for violation of the Code of Professional Responsibility (*CPR*). His failure to solemnly perform his duty as a notary public not only damaged those directly affected by the notarized documents but also undermined the integrity of a notary public and degraded the function of notarization. He should, thus, be held liable for such negligence not only as a notary public but also as a lawyer.¹⁵ Where the notary public is a lawyer, a graver responsibility is placed upon his shoulder by reason of his solemn oath to obey the laws and to do no falsehood or consent to the doing of any.¹⁶

Respondent violated Canon 9 of the *CPR* which requires lawyers not to directly or indirectly assist in the unauthorized practice of law. Due to his negligence that allowed his secretary to sign on his behalf as notary public, he allowed an unauthorized person to practice law. By leaving his office open despite his absence in the country and with his secretary in charge, he virtually allowed his secretary

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

to notarize documents without any restraint.

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

Considering the facts and circumstances of the case, an additional penalty of suspension from the practice of law for three (3) months is in order.

Respondent should remember that a notarial commission is a privilege and a significant responsibility. It is a privilege granted only to those who are qualified to perform duties imbued with public interest. As we have declared on several occasions, notarization is not an empty, meaningless, routinary act. It is invested with substantive public interest, such that only those who are qualified or authorized may act as notary public. The protection of that interest necessarily requires that those not qualified or authorized to act must be prevented from imposing upon the public, the courts, and the administrative offices in general.¹⁷

It must be underscored that notarization by a notary public converts a private document into a public document, making that document admissible in evidence without further proof of its authenticity. Thus, notaries public must observe with utmost care the basic requirements in the performance of their duties. Otherwise, the confidence of the public in the

integrity of public instruments would be undermined.¹⁸

Let this serve as a reminder to the members of the legal profession that the Court will not take lightly complaints of unauthorized acts of notarization, especially when the trust and confidence reposed by the public in our legal system hang in the balance.

• **Erlinda Foster Vs. Atty. Jaime V. Agtang**

A.C. No. 10579. December 10, 2014

• **The Court's Ruling**

- The Court sustains the findings and recommendation of the Investigating Commissioner with respect to respondent's violation of Rules 1 and 16 of the CPR. The Court, however, modifies the conclusion on his alleged violation of Rule 15, on representing conflicting interests. The Court also differs on the penalty.
- Rule 1.0, Canon 1 of the CPR, provides that "[a] lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct." It is well-established that a lawyer's conduct is "not confined to the performance of his professional duties. A lawyer may be disciplined for misconduct committed either in his professional or private capacity. The test is whether his conduct shows him to be wanting in moral character, honesty, probity, and good demeanor, or whether it renders him unworthy to continue as an officer of the court."²⁷
- In this case, respondent is guilty of engaging in dishonest and deceitful conduct, both in his professional and private capacity. As a lawyer, he clearly misled complainant into believing that the filing fees for her case were worth more than the prescribed amount in the rules, due to feigned reasons such as the high value of the land involved and

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

the extra expenses to be incurred by court employees. In other words, he resorted to overpricing, an act customarily related to depravity and dishonesty. He demanded the amount of P150,000.00 as filing fee, when in truth, the same amounted only to P22,410.00. His defense that it was complainant who suggested that amount deserves no iota of credence. For one, it is highly improbable that complainant, who was then plagued with the rigors of litigation, would propose such amount that would further burden her financial resources. Assuming that the complainant was more than willing to shell out an exorbitant amount just to initiate her complaint with the trial court, still, respondent should not have accepted the excessive amount. As a lawyer, he is not only expected to be knowledgeable in the matter of filing fees, but he is likewise duty-bound to disclose to his client the actual amount due, consistent with the values of honesty and good faith expected of all members of the legal profession.

-
- Moreover, the "fiduciary nature of the relationship between the counsel and his client imposes on the lawyer the duty to account for the money or property collected or received for or from his client."²⁸ Money entrusted to a lawyer for a specific purpose but not used for the purpose should be immediately returned. A lawyer's failure to return upon demand the funds held by him on behalf of his client gives rise to the presumption that he has appropriated the same for his own use in violation of the trust reposed in him by his client. Such act is a gross violation of general morality as well as of professional ethics. It impairs public confidence in the legal profession and deserves punishment.²⁹

-
- It is clear that respondent failed to fulfill this duty. As pointed out, he received various amounts from complainant but he could not account for all of them. Worse, he could not deny the authenticity of the receipts presented by complainant. Upon demand, he failed to return the excess money from the alleged filing fees and other expenses. His possession gives rise to the presumption that he has misappropriated it for his own use to the prejudice of, and in violation of the trust reposed in him by, the client.³⁰ When a lawyer receives money from the client for a particular purpose, the lawyer is bound to render an accounting to the client showing that the money was spent for the intended purpose. Consequently, if the lawyer does not use the money for the intended purpose, the lawyer must immediately return the money to the client.³¹
-
- Somewhat showing a propensity to demand excessive and unwarranted amounts from his client, respondent displayed a reprehensible conduct when he asked for the amount of P50,000.00 as "representation expenses" allegedly for the benefit of the judge handling the case, in exchange for a favorable decision. Respondent himself signed a receipt showing that he initially took the amount of P 25,000.00 and, worse, he subsequently demanded and received the other half of the amount at the time the case had already been dismissed. Undoubtedly, this act is tantamount to gross misconduct that necessarily warrants the supreme penalty of disbarment. The act of demanding a sum of money from his client, purportedly to be used as a bribe to ensure a positive outcome of a case, is not

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

only an abuse of his client's trust but an overt act of undermining the trust and faith of the public in the legal profession and the entire Judiciary. This is the height of indecency. As officers of the court, lawyers owe their utmost fidelity to public service and the administration of justice. In no way should a lawyer indulge in any act that would damage the image of judges, lest the public's perception of the dispensation of justice be overshadowed by iniquitous doubts. The denial of respondent and his claim that the amount was given gratuitously would not excuse him from any liability. The absence of proof that the said amount was indeed used as a bribe is of no moment. To tolerate respondent's actuations would seriously erode the public's trust in the courts.

-
- As it turned out, complainant's case was dismissed as early as September 29, 2010. At this juncture, respondent proved himself to be negligent in his duty as he failed to inform his client of the status of the case, and left the client to personally inquire with the court. Surely, respondent was not only guilty of misconduct but was also remiss in his duty to his client.
-
- Respondent's unbecoming conduct towards complainant did not stop here. Records reveal that he likewise violated Rule 16.04, Canon 16 of the CPR, which states 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 lend money to a client except, when in the interest of justice, he has to advance necessary expenses in a legal matter he is handling for the client." In his private capacity, he

requested from his client, not just one, but two loans of considerable amounts. The first time, he visited his client in her home and borrowed P100,000.00 for the repair of his car; and the next time, he implored her to extend to him a loan of P70,000.00 or P50,000.00 "in the moment of urgency or emergency" but was only given P22,000.00 by complainant. These transactions were evidenced by promissory notes and receipts, the authenticity of which was never questioned by respondent. These acts were committed by respondent in his private capacity, seemingly unrelated to his relationship with complainant, but were indubitably acquiesced to by complainant because of the trust and confidence reposed in him as a lawyer. Nowhere in the records, particularly in the defenses raised by respondent, was it implied that these loans fell within the exceptions provided by the rules. The loans of P100,000.00 and P22,000.00 were surely not protected by the nature of the case or by independent advice. Respondent's assertion that the amounts were given to him out of the liberality of complainant and were, thus, considered as "no loan," does not justify his inappropriate behavior. The acts of requesting and receiving money as loans from his client and thereafter failing to pay the same are indicative of his lack of integrity and sense of fair dealing. Up to the present, respondent has not yet paid his obligations to complainant.

-
- Time and again, the Court has consistently held that deliberate failure to pay just debts constitutes gross misconduct, for which a lawyer may be sanctioned with suspension from the practice of law. Lawyers are instruments for

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

the administration of justice and vanguards of our legal system. They are expected to maintain not only legal proficiency, but also a high standard of morality, honesty, integrity and fair dealing so that the people's faith and confidence in the judicial system is ensured. They must, at all times, faithfully perform their duties to society, to the bar, the courts and their clients, which include prompt payment of financial obligations.³²

-
- Verily, when the Code or the Rules speaks of "conduct" or "misconduct," the reference is not confined to one's behavior exhibited in connection with the performance of the lawyer's professional duties, but also covers any misconduct which, albeit unrelated to the actual practice of his profession, would show him to be unfit for the office and unworthy of the privileges which his license and the law vest him with. Unfortunately, respondent must be found guilty of misconduct on both scores.
-
- With respect to respondent's alleged representation of conflicting interests, the Court finds it proper to modify the findings of the Investigating Commissioner who concluded that complainant presented insufficient evidence of respondent's "lawyering" for the opposing party, Tierra Realty.
-
- Rule 15.03, Canon 15 of the CPR, provides that "[a] lawyer shall not represent conflicting interest except by written consent of all concerned given after a full disclosure of the facts." The relationship between a lawyer and his/her client should ideally be imbued with the highest level of trust and confidence. This is the standard of confidentiality that

must prevail to promote a full disclosure of the client's most confidential information to his/her lawyer for an unhampered exchange of information between them. Needless to state, a client can only entrust confidential information to his/her lawyer based on an expectation from the lawyer of utmost secrecy and discretion; the lawyer, for his part, is duty-bound to observe candor, fairness and loyalty in all dealings and transactions with the client. Part of the lawyer's duty in this regard is to avoid representing conflicting interests.³³ Thus, even if lucrative fees offered by prospective clients are at stake, a lawyer must decline professional employment if the same would trigger the violation of the prohibition against conflict of interest. The only exception provided in the rules is a written consent from all the parties after full disclosure.

-
- The Court deviates from the findings of the IBP. There is substantial evidence to hold respondent liable for representing conflicting interests in handling the case of complainant against Tierra Realty, a corporation to which he had rendered services in the past. The Court cannot ignore the fact that respondent admitted to having notarized the deed of sale, which was the very document being questioned in complainant's case. While the Investigating Commissioner found that the complainant in Civil Case No. 14791-65 did not question the validity of the said contract, and that only the intentions of the parties as to some provisions thereof were challenged, the Court still finds that the purpose for which the proscription was made exists. The Court cannot brush aside the dissatisfied observations of the complainant as to the allegations lacking in the

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

complaint against Tierra Realty and the clear admission of respondent that he was the one who notarized the assailed document. Regardless of whether it was the validity of the entire document or the intention of the parties as to some of its provisions raised, respondent fell short of prudence in action when he accepted complainant's case, knowing fully that he was involved in the execution of the very transaction under question. Neither his unpaid notarial fees nor the participation of a collaborating counsel would excuse him from such indiscretion. It is apparent that respondent was retained by clients who had close dealings with each other. More significantly, there is no record of any written consent from any of the parties involved.

-
- The representation of conflicting interests is prohibited "not only because the relation of attorney and client is one of trust and confidence of the highest degree, but also because of the principles of public policy and good taste. An attorney has the duty to deserve the fullest confidence of his client and represent him with undivided

- **Caroline Castañeda Jimenez Vs. Atty. Edgar B. Francisco** A.C. No. 10548. December 10, 2014

• The Court's Ruling

- *Violations of Canons 1 and 10 of the CPR and the Lawyer's Oath*
-
- Canon 1 and Rule 1.01 of the CPR provide:
- CANON 1 – A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCESSES.
-
- Rule 1.0 – A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

- Canon 1 clearly mandates the obedience of every lawyer to laws and legal processes. To the best of his ability, a lawyer is expected to respect and abide by the law and, thus, avoid any act or omission that is contrary thereto. A lawyer's personal deference to the law not only speaks of his character but it also inspires respect and obedience to the law, on the part of the public. Rule 1.0, 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.¹⁶ To be "dishonest" means the disposition to lie, cheat, deceive, defraud or betray; be unworthy; lacking in integrity, honesty, probity, integrity in principle, fairness and straightforwardness¹⁷ while conduct that is "deceitful" means the proclivity for fraudulent and deceptive misrepresentation, artifice or device that is used upon another who is ignorant of the true facts, to the prejudice and damage of the party imposed upon.¹⁸

-
- Membership in the legal profession is bestowed upon individuals who are not only learned in law, but also known to possess good moral character. Lawyers should act and comport themselves with honesty and integrity in a manner beyond reproach, in order to promote the public's faith in the legal profession.¹⁹ "To say that lawyers must at all times uphold and respect the law is to state the obvious, but such statement can never be overemphasized. Considering that, of all classes and

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

professions, [lawyers are] most sacredly bound to uphold the law, it is imperative that they live by the law."²⁰

-
- When Atty. Francisco was admitted to the Bar, he also took an oath to "obey the laws," "do no falsehood," and conduct himself as a lawyer according to the best of his knowledge and discretion.²¹
-
- In the facts obtaining in this case, Atty. Francisco clearly violated the canons and his sworn duty. He is guilty of engaging in dishonest and deceitful conduct when he admitted to having allowed his corporate client, Clarion, to actively misrepresent to the SEC, the significant matters regarding its corporate purpose and subsequently, its corporate shareholdings. In the documents submitted to the SEC, such as the deeds of assignment and the GIS, Atty. Francisco, in his professional capacity, feigned the validity of these transfers of shares, making it appear that these were done for consideration when, in fact, the said transactions were fictitious, albeit upon the alleged orders of Jimenez. The Investigating Commissioner was correct in pointing out that this ran counter to the deeds of assignment which he executed as corporate counsel. In his long practice as corporate counsel, it is indeed safe to assume that Atty. Francisco is knowledgeable in the law on contracts, corporation law and the rules enforced by the SEC. As corporate secretary of Clarion, it was his duty and obligation to register valid transfers of stocks. Nonetheless, he chose to advance the interests of his clientele with patent disregard of his duties as a lawyer. Worse, Atty. Francisco admitted to have simulated the loan entered into by Clarion and to

have undervalued the consideration of the effected sale of the Forbes property. He permitted this fraudulent ruse to cheat the government of taxes. Unquestionably, therefore, Atty. Francisco participated in a series of grave legal infractions and was content to have granted the requests of the persons involved.

-
- Despite assertions that these were in accordance to Jimenez's wishes, or pursuant to complainant's misrepresentations, the Court cannot turn a blind eye on Atty. Francisco's act of drafting, or at the very least, permitting untruthful statements to be embodied in public documents. If the Court allows this highly irregular practice for the specious reason that lawyers are constrained to obey their clients' flawed scheming and machinations, the Court would, in effect, sanction wrongdoing and falsity. This would undermine the role of lawyers as officers of the court.
-
- Time and again, the Court has reminded lawyers that their support for the cause of their clients should never be attained at the expense of truth and justice. While a lawyer owes absolute fidelity to the cause of his client, full devotion to his genuine interest, and warm zeal in the maintenance and defense of his rights, as well as the exertion of his utmost learning and ability, he must do so only within the bounds of the law. It needs to be emphasized that the lawyer's fidelity to his client must not be pursued at the expense of truth and justice, and must be held within the bounds of reason and common sense. His responsibility to protect and advance the interests of his client does not warrant a course of action

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

propelled by ill motives and malicious intentions.²²

-
- In the same vein, Atty. Francisco's admissions show that he lacks candor regarding his dealings. Canon 10 of the CPR provides that, "[a] lawyer owes candor, fairness and good faith to the court." Corollary thereto, Rule 10.0 of the CPR provides that "a lawyer shall do no falsehood, nor consent to the doing of any in Court, nor shall he mislead or allow the Court to be misled by an artifice." Lawyers are officers of the court, called upon to assist in the administration of justice. They act as vanguards of our legal system, protecting and upholding truth and the rule of law. They are expected to act with honesty in all their dealings, especially with the court.²³
-
- From the foregoing, Atty. Francisco clearly violated his duties as a lawyer embodied in the CPR, namely, to avoid dishonest and deceitful conduct, (Rule 1.01, Canon 1) and to act with candor, fairness and good faith (Rule 10.01, Canon 10). Also, Atty. Francisco desecrated his solemn oath not to do any falsehood nor consent to the doing of the same.

Markedly, Atty. Francisco could have prevented his entanglement with this fiasco among the members of Jimenez's family by taking an upfront and candid stance in dealing with Jimenez's children and complainant. He could have been staunch in reminding the latter that his tasks were performed in his capacity as legal counsel for Clarion and Jimenez. Be that as it may, Atty. Francisco's indiscretion does not detract the Court from finding that the totality of evidence presented by the complainant miserably failed to discharge the burden of proving that Atty. Francisco was her lawyer. At most, he served as the legal counsel of Clarion and, based on the affirmation presented, of Jimenez. Suffice it to say,

complainant failed to establish that Atty. Francisco committed a violation of the rule on conflict of interests.

Consequently, the rule on lawyer-client privilege does not apply. In *Mercado v. Vitriolo*,²⁸ the Court elucidated on the factors essential to establish the existence of the said privilege, viz:

In fine, the factors are as follows:

(1) There exists an attorney-client relationship, or a prospective attorney-client relationship, and it is by reason of this relationship that the client made the communication.

Matters disclosed by a prospective client to a lawyer are protected by the rule on privileged communication even if the prospective client does not thereafter retain the lawyer or the latter declines the employment. The reason for this is to make the prospective client free to discuss whatever he wishes with the lawyer without fear that what he tells the lawyer will be divulged or used against him, and for the lawyer to be equally free to obtain information from the prospective client.

xxx

(2) The client made the communication in confidence.

The mere relation of attorney and client does not raise a presumption of confidentiality. The client must intend the communication to be confidential.

A confidential communication refers to information transmitted by voluntary act of disclosure between attorney and client in confidence and by means which, so far as the client is aware, discloses the information to no third person other than one reasonably necessary for the transmission of the information or the accomplishment of the purpose for which it was given.

Our jurisprudence on the matter rests on

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

quiescent ground. Thus, a compromise agreement prepared by a lawyer pursuant to the instruction of his client and delivered to the opposing party, an offer and counter-offer for settlement, or a document given by a client to his counsel not in his professional capacity, are not privileged communications, the element of confidentiality not being present.

(3) The legal advice must be sought from the attorney in his professional capacity.

The communication made by a client to his attorney must not be intended for mere information, but for the purpose of seeking legal advice from his attorney as to his rights or obligations. The communication must have been transmitted by a client to his attorney for the purpose of seeking legal advice.

If the client seeks an accounting service, or business or personal assistance, and not legal advice, the privilege does not attach to a communication disclosed for such purpose.

[Emphases supplied]

Considering these factors in the case at bench, the Court holds that the evidence on record fails to demonstrate the claims of complainant. As discussed, the complainant failed to establish the professional relationship between her and Atty. Francisco. The records are further bereft of any indication that the "advice" regarding the sale of the Forbes property was given to Atty. Francisco in confidence. Neither was there a demonstration of what she had communicated to Atty. Francisco nor a recital of circumstances under which the confidential communication was relayed. All that complaint alleged in her complainant was that "she sought legal advice from respondent in various occasions."²⁹ Considering that complainant failed to attend the hearings at the IBP, there was no testimony as to the specific confidential information allegedly divulged by Atty. Francisco without her consent. It is,

therefore, difficult, if not impossible, to determine if there was any violation of the rule on privileged communication. As held in *Mercado*, such confidential information is a crucial link in establishing a breach of the rule on privileged communication between attorney and client. It is not enough to merely assert the attorney-client privilege.³⁰ It cannot be gainsaid then that complainant, who has the burden of proving that the privilege applies, failed in this regard.

- **Spouses Nicasio & Donelita San Pedro Vs. Atty. Isagani A. Mendoza** A.C. No. 5440. December 10, 2014

- the main issue in this case is whether respondent is guilty of violating Canon 16 of the Code of Professional Responsibility for failing to hold in trust the money of his clients.

It has been said that "[t]he practice of law is a privilege bestowed on lawyers who meet the high standards of legal proficiency and morality. Any conduct that shows a violation of the norms and values of the legal profession exposes the lawyer to administrative liability."³⁵

An examination of the records reveals that respondent violated the Code of Professional Responsibility.

Canon 16 of the Code of Professional Responsibility states:

CANON 16 - A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION.

Rule 16.01 - A lawyer shall account for all money or property collected or received for or from the client.

Rule 16.02 - A lawyer shall keep the funds of each client separate and apart from his own and those of others kept by him.

Rule 16.03 - A lawyer shall deliver the

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

funds and property of his client when due or upon demand. However, he shall have a lien over the funds and may apply so much thereof as may be necessary to satisfy his lawful fees and disbursements, giving notice promptly thereafter to his client. He shall also have a lien to the same extent on all judgments and executions he has secured for his client as provided for in the Rules of Court.

Rule 16.04 – A lawyer shall not borrow money from his client unless the client's interests are fully protected by the nature of the case or by independent advice. Neither shall a lawyer lend money to a client except, when in the interest of justice, he has to advance necessary expenses in a legal matter he is handling for the client.

Similarly, Rule 138, Section 25 of the Rules of Court provides:

Section 25. Unlawful retention of client's funds; contempt. — When an attorney unjustly retains in his hands money of his client after it has been demanded, he may be punished for contempt as an officer of the Court who has misbehaved in his official transactions; but proceedings under this section shall not be a bar to a criminal prosecution.

A lawyer's duty under Canon 16 of the Code of Professional Responsibility is clear:

The fiduciary nature of the relationship between counsel and client imposes on a lawyer the duty to account for the money or property collected or received for or from the client[,] [thus] . . . [w]hen a lawyer collects or receives money from his client for a particular purpose (such as for filing fees, registration fees, transportation and office expenses), he should promptly account to the client how the money was spent. If he does not use the money for its intended purpose, he must immediately return it to the client. His failure either to render an accounting or to

return the money (if the intended purpose of the money does not materialize) constitutes a blatant disregard of Rule 16.01 of the Code of Professional Responsibility.

[The lawyer's] failure to return the client's money upon demand gives rise to the presumption that he has misappropriated it for his own use to the prejudice of and in violation of the trust reposed in him by the client.³⁶ (Emphasis supplied)

Respondent admitted that there were delays in the transfer of title of property to complainants' name. He continuously assured complainants that he would still fulfill his duty. However, after three (3) years and several demands from complainants, respondent failed to accomplish the task given to him and even refused to return the money. Complainants' alleged failure to provide the necessary documents to effect the transfer does not justify his violation of his duty under the Code of Professional Responsibility.

Respondent's assertion of a valid lawyer's lien is also untenable. A valid retaining lien has the following elements:

An attorney's retaining lien is fully recognized if the presence of the following elements concur: (1) lawyer-client relationship; (2) lawful possession of the client's funds, documents and papers; and (3) unsatisfied claim for attorney's fees. Further, the attorney's retaining lien is a general lien for the balance of the account between the attorney and his client, and applies to the documents and funds of the client which may come into the attorney's possession in the course of his employment.³⁷

Respondent did not satisfy all the elements of a valid retaining lien. He did not present evidence as to an unsatisfied claim for attorney's fees. The enumeration of cases he worked on for complainants remains

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

unsubstantiated. When there is no unsatisfied claim for attorney's fees, lawyers cannot validly retain their client's funds or properties.³⁸

Furthermore, assuming that respondent had proven all the requisites for a valid retaining lien, he cannot appropriate for himself his client's funds without the proper accounting and notice to the client. The rule is that when there is "a disagreement, or when the client disputes the amount claimed by the lawyer . . . the lawyer should not arbitrarily apply the funds in his possession to the payment of his fees.

• **Marilen G. Soliman Vs. Atty. Ditas Lerios-Amboy** A.C. No. 10568. January 13, 2015

- The Code of Professional Responsibility clearly states that a lawyer owes fidelity to the cause of his client and that he should be mindful of the trust and confidence reposed in him.¹⁴ A lawyer is mandated to serve his client with competence and diligence; to never neglect a legal matter entrusted to him; and to keep his client informed of the status of his case and respond within a reasonable time to the client's request for information.¹⁵
- The circumstances of this case clearly show that Atty. Amboy, after receiving P25,000.00 as payment for her professional services, failed to submit material documents relative to the issuance of separate certificates of title to the individual owners of the property. It was her negligence which caused the delay in the issuance of the certificates of title.
- To make matters worse, Atty. Amboy abetted the commission of an illegal act when she asked from Soliman the amount of P50,000.00

to be paid to her "contact" inside the office of the RD in order to facilitate the release of the said certificates of title. Further, notwithstanding the payment of P50,000.00, Atty. Amboy still failed to obtain issuance of the said certificates of title. Instead of procuring the release of the certificates of title as she promised, Atty. Amboy asked for an additional P10,000.00 from Soliman.

- Clearly, this is not a simple case of negligence and incompetence by a counsel in dealing with a client. Atty. Amboy's acts undermined the legal processes, which she swore to uphold and defend. In swearing to the oath, Atty. Amboy bound herself to respect the law and legal processes.
- The Court further finds improper the refusal of Atty. Amboy to return the amount of P50,000.00 which she paid in order to facilitate the release of the certificates of title. To reiterate, upon inquiry, Atty. Marasigan, the Deputy RD of Manila, denied having received any amount from Atty. Amboy. In not returning the money to Soliman after a demand therefor was made following her failure to procure the issuance of the certificates of title, Atty. Amboy violated Canon 16 of the Code of Professional Responsibility, particularly Rule 16.03 thereof, which requires that a lawyer shall deliver the funds and property of his client upon demand. It is settled that the unjustified withholding of money belonging to a client warrants the imposition of disciplinary action.¹⁶
- "A lawyer's failure to return upon demand the funds held by him on

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

behalf of his client gives rise to the presumption that he has appropriated the same for his own use in violation of the trust reposed in him by his client. Such act is a gross violation of general morality as well as of professional ethics. It impairs public confidence in the legal profession and deserves punishment."¹⁷

• **Fernando W. Chu Vs. Atty. Jose C. Guico, Jr.** A.C. No. 10573. January 13, 2015

- Issue
- Did Atty. Guico violate the Lawyer's Oath and Rules 1.01 and 1.02, Canon I of the Code of Professional Responsibility for demanding and receiving P580,000.00 from Chu to guarantee a favorable decision from the NLRC?

What is the condign penalty for Atty. Guico?

In taking the Lawyer's Oath, Atty. Guico bound himself to:

x x x maintain allegiance to the Republic of the Philippines; x x x support its Constitution and obey the laws as well as the legal orders of the duly constituted authorities therein; x x x do no falsehood, nor consent to the doing of any in court; x x x delay no man for money or malice x x x.

The Code of Professional Responsibility echoes the Lawyer's Oath, to wit:

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

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

Rule 1.02 — A lawyer shall not counsel or

abet activities aimed at defiance of the law or at lessening confidence in the legal system.

The sworn obligation to respect the law and the legal processes under the Lawyer's Oath and the Code of Professional Responsibility is a continuing condition for every lawyer to retain membership in the Legal Profession. To discharge the obligation, every lawyer should not render any service or give advice to any client that would involve defiance of the very laws that he was bound to uphold and obey, for he or she was always bound as an attorney to be law abiding, and thus to uphold the integrity and dignity of the Legal Profession.

Verily, he or she must act and comport himself or herself in such a manner that would promote public confidence in the integrity of the Legal Profession. Any lawyer found to violate this obligation forfeits his or her privilege to continue such membership in the legal profession.

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

• **Acratomy S. Guarin Vs. Atty. Christine A.C. Limpin** A.C. No. 10576. January 14, 2015

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

- We adopt the report and recommendation of the IBP. Atty. Limpin has violated Canon 1, Rule 1.01 and Rule 1.02 of the CPR.

After going through the submissions and stipulations of the parties, we agree with the IBP that there is no indication that Guarin held any share to the corporation and that he is therefore ineligible to hold a seat in the BOD and be the president of the company.

It is undisputed that Atty. Limpin filed and certified that Guarin was a stockholder of LCI in the GIS. While she posits that she had made the same in good faith, her certification also contained a stipulation that she made a due verification of the statements contained therein. That Atty. Limpin believed that Guarin would sign a Deed of Assignment is inconsequential: he never signed the instrument. We also note that there was no submission which would support the allegation that Guarin was in fact a stockholder. We thus find that in filing a GIS that contained false information, Atty. Limpin committed an infraction which did not conform to her oath as a lawyer in accord with Canon 1 and Rule 1.01 of the CPR.

We also agree with the IBP that in allowing herself to be swayed by the business practice of having Mr. de los Angeles appoint the members of the BOD and officers of the corporation despite the rules enunciated in the Corporation Code with respect to the election of such officers, Atty. Limpin has transgressed Rule 1.02 of the CPR.

• **Re: Violation of Rules on Notarial Practice**

A.M. No. 09-6-1-SC. January 21, 2015

- A review of the records and evidence presented by complainants shows that Atty. Siapno indeed maintained a law office in Lingayen, Pangasinan, just beside the law office of one of the complainants, Atty. Elizabeth Tugade. It was also proven that Atty. Siapno notarized several

instruments with an expired notarial commission outside the territorial jurisdiction of the commissioning court. Section 11, Rule III of the 2004 Rules on Notarial Practice provides that:

- Jurisdiction and Term – A person commissioned as notary public may perform notarial acts in any place within the territorial jurisdiction of the commissioning court for a period of two (2) years commencing the first day of January of the year in which the commissioning is made, unless earlier revoked or the notary public has resigned under these Rules and the Rules of Court.
- Under the rule, only persons who are commissioned as notary public may perform notarial acts within the territorial jurisdiction of the court which granted the commission. Clearly, Atty. Siapno could not perform notarial functions in Lingayen, Natividad and Dagupan City of the Province of Pangasinan since he was not commissioned in the said places to perform such act.
- Time and again, this Court has stressed that notarization is not an empty, meaningless and routine act. It is invested with substantive public interest that only those who are qualified or authorized may act as notaries public.¹² It must be emphasized that the act of notarization by a notary public converts a private document into a public document making that document admissible in evidence without further proof of authenticity. A notarial document is by law entitled to full faith and credit upon its face, and for this reason, notaries public must observe with utmost care the basic requirements in the performance of their duties.

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

- By performing notarial acts without the necessary commission from the court, Atty. Siapno violated not only his oath to obey the laws particularly the Rules on Notarial Practice but also Canons 1 and 7 of the Code of Professional Responsibility which proscribes all lawyers from engaging in unlawful, dishonest, immoral or deceitful conduct and directs them to uphold the integrity and dignity of the legal profession, at all times.¹³

• **Dr. Domiciano F. Villahermosa, Sr. Vs. Atty. Isidro L. Caracol** A.C. No. 7325. January 21, 2015

- The Rules of Court under Rule 138, Section 21 provides for a presumption of a lawyer's appearance on behalf of his client, hence:
- SEC. 21. *Authority of attorney to appear.* – An attorney is **presumed to be properly authorized to represent any cause in which he appears**, and no written power of attorney is required to authorize him to appear in court for his client, but the presiding **judge may, on motion of either party and on reasonable grounds therefor being shown, require any attorney who assumes the right to appear in a case to produce or prove the authority** under which he appears, and to disclose, whenever pertinent to any issue, the name of the person who employed him, and may thereupon make such order as justice requires. An attorney willfully appearing in court for a person without being employed, unless by leave of the court, may be punished for contempt as an officer of the court who has misbehaved in his official transactions. (Emphases supplied)
- In *Land Bank of the Philippines v. Pamintuan Dev't. Co.*,²¹ this Court

said that while a lawyer is not required to present proof of his representation, when a court requires that he show such authorization, it is imperative that he show his authority to act. Thus:

- A lawyer is not even required to present a written authorization from the client. In fact, the absence of a formal notice of entry of appearance will not invalidate the acts performed by the counsel in his client's name. However, [a] court, on its own initiative or on motion of the other party may require a lawyer to adduce authorization from the client.²²
- Lawyers must be mindful that an attorney has no power to act as counsel for a person without being retained nor may he appear in court without being employed unless by leave of court.²³ If an attorney appears on a client's behalf without a retainer or the requisite authority neither the litigant whom he purports to represent nor the adverse party may be bound or affected by his appearance unless the purported client ratifies or is estopped to deny his assumed authority.²⁴ If a lawyer corruptly or willfully appears as an attorney for a party to a case without authority, he may be disciplined or punished for contempt as an officer of the court who has misbehaved in his official transaction.²⁵
- We must also take into consideration that even if a lawyer is retained by a client, an attorney-client relationship terminates upon death of either client or the lawyer.²⁶

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

- Here, Atty. Caracol was presumed to have authority when he appeared in the proceedings before the DARAB. The records are unclear at what point his authority to appear for Efren was questioned. Neither is there any indication that Villahermosa in fact questioned his authority during the course of the proceedings.
-
- However, Atty. Caracol knew that Efren had already passed away at the time he filed the Motion for Issuance of Second Alias Writ of Execution and Demolition. As an honest, prudent and conscientious lawyer, he should have informed the Court of his client's passing and presented authority that he was retained by the client's successors-in-interest and thus the parties may have been substituted.²⁷

While this observation does not serve to exacerbate Atty. Caracol's liability under the present circumstances, we would like to highlight the important role of an attorney in our judicial system. Because of the particular nature of an attorney's function it is essential that they should act with fairness, honesty and candor towards the courts and his clients.³⁰ Under Rule 10.01 of the Code of Professional Responsibility:

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.

This flows out from the lawyer's oath which each lawyer solemnly swears to uphold the law and court processes in the pursuit of justice. Thus, a lawyer must be more circumspect in his demeanor and attitude towards the public in general as agents of the judicial system.

- Here, Atty. Caracol, as observed by the IBP CBD, has been less than candid about his representation.

We also observe that he has used underhanded means to attain his purpose. Atty. Caracol's blatant disregard of his duties as a lawyer cannot be countenanced. In view of his actions of contravening his lawyer's oath and in violation of Canons 8 and 10 and Rule 10.01 of the Code of Professional Responsibility we deem it proper to suspend him from the practice of law for a period of one year.

- **Joselito F. Tejano Vs. Atty. Benjamin F. Bateria** A.C. No. 8235. January 27, 2015

• The Court's Ruling

-
- The Court adopts the IBP's report and recommendation, with modification as to the penalty.
-
- The Code of Professional Responsibility governing the conduct of lawyers states:
 - CANON 18 – A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.
 -
 - x x x x
 -
 - RULE 18.03 – A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.
 -
 - RULE 18.04 – A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.
 - Lawyers have a "fourfold duty to society, the legal profession, the courts and their clients," and must act "in accordance with the values and norms of the legal profession as embodied in the Code of Professional Responsibility."²⁴
 -
 - When a lawyer agrees to take up a client's cause, he makes a

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

commitment to exercise due diligence in protecting the latter's rights. Once a lawyer's services are engaged, "he is duty bound to serve his client with competence, and to attend to his client's cause with diligence, care and devotion regardless of whether he accepts it for a fee or for free. He owes fidelity to such cause and must always be mindful of the trust and confidence reposed on him."²⁵ A lawyer's acceptance to take up a case "impliedly stipulates [that he will] carry it to its termination, that is, until the case becomes final and executory."²⁶

-
- Atty. Baterina's duty to his clients did not automatically cease with his suspension. At the very least, such suspension gave him a concomitant responsibility to inform his clients that he would be unable to attend to their case and advise them to retain another counsel.
-
- A lawyer – even one suspended from practicing the profession – owes it to his client to not "sit idly by and leave the rights of his client in a state of uncertainty."²⁷ The client "should never be left groping in the dark" and instead must be "adequately and fully informed about the developments in his case."²⁸
-
- Atty. Baterina practically abandoned this duty when he allowed the proceedings to run its course without any effort to safeguard his clients' welfare in the meantime. His failure to file the required pleadings on his clients' behalf constitutes gross negligence in violation of the Code of Professional Responsibility²⁹ and renders him subject to disciplinary action.³⁰ The penalties for a lawyer's failure to file the required brief or pleading range from

warning, reprimand, fine, suspension, or in grave cases, disbarment.³¹

-
- Further, Atty. Baterina's reckless disregard for orders and directives of the courts is unbecoming of a member of the Bar. His conduct has shown that he has little respect for rules, court processes, and even for the Court's disciplinary authority. Not only did he fail to follow the trial court's orders in his clients' case, he even disregarded court orders in his own disciplinary proceedings.
-
- Considering Atty. Baterina's medical condition at that time, a simple explanation to the Court would have sufficed. Instead, however, he simply let the orders go unheeded, neglecting his duty to the Court.
-
- Lawyers, as this Court has previously emphasized, "are particularly called upon to obey court orders and processes and are expected to stand foremost in complying with court directives being themselves officers of the court."³² As such, Atty. Baterina should "know that a resolution of this Court is not a mere request but an order which should be complied with promptly and completely."³³

- **Melvyn G. Garcia Vs. Raul H. Sesbreño** A.C. No. 7973 and A.C. No. 10457. February 3, 2015

- The question of whether conviction for homicide involves moral turpitude was discussed by this Court in *International Rice Research Institute v. NLRC*⁶ where it ruled:
-
- This is not to say that all convictions of the crime of homicide do not involve moral turpitude. Homicide may or may not involve moral turpitude

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

depending on the degree of the crime. Moral turpitude is not involved in every criminal act and is not shown by every known and intentional violation of statute, but whether any particular conviction involves moral turpitude may be a question of fact and frequently depends on all the surrounding circumstances. While x x x generally but not always, crimes *mala in se* involve moral turpitude, while crimes *mala prohibita* do not, it cannot always be ascertained whether moral turpitude does or does not exist by classifying a crime as *malum in se* or as *malum prohibitum*, since there are crimes which are *mala in se* and yet rarely involve moral turpitude and there are crimes which involve moral turpitude and are *mala prohibita* only. It follows therefore, that moral turpitude is somewhat a vague and indefinite term, the meaning of which must be left to the process of judicial inclusion or exclusion as the cases are reached.⁷

We cannot accept Sesbreño's argument that the executive clemency restored his full civil and political rights.

Again, there was no mention that the executive clemency was absolute and unconditional and restored Sesbreño to his full civil and political rights.

There are four acts of executive clemency that the President can extend: the President can grant reprieves, commutations, pardons, and remit fines and forfeitures, after conviction by final judgment.¹⁵ In this case, the executive clemency merely **"commuted to an indeterminate prison term of 7 years and 6 months to 10 years imprisonment"** the penalty imposed on Sesbreño. Commutation is a mere reduction of penalty.¹⁶ **Commutation only partially extinguished criminal liability.**¹⁷ The penalty for Sesbreño's crime was never wiped out. He served the

commuted or reduced penalty, for which reason he was released from prison. More importantly, the Final Release and Discharge¹⁸ stated that **"[i]t is understood that such x x x accessory penalties of the law as have not been expressly remitted herein shall subsist."** Hence, the Parcasio case has no application here. Even if Sesbreño has been granted pardon, there is nothing in the records that shows that it was a full and unconditional pardon. In addition, the practice of law is not a right but a privilege.¹⁹ It is granted only to those possessing good moral character.²⁰ A violation of the high moral standards of the legal profession justifies the imposition of the appropriate penalty against a lawyer, including the penalty of disbarment.²¹

• **Spouses Henry A. Concepcion and Blesida S. Concepcion Vs. Atty. Elmer A. Dela Rosa** A.C. No. 10681. February 3, 2015

- The Issue Before the Court
- The central issue in this case is whether or not respondent should be held administratively liable for violating the CPR.
-

I.

Respondent's receipt of the 2,500,000.00 loan from complainants is amply supported by substantial evidence. As the records bear out, Blesilda, on March 23, 2006, issued three (3) EastWest Bank Checks, in amounts totalling to 2,500,000.00, with respondent as the payee.

Under Rule 16.04, Canon 16 of the CPR, a lawyer is prohibited from borrowing money from his client unless the client's interests are fully protected:

CANON 16 – A lawyer shall hold in trust all moneys and properties of his clients that may come into his possession.

Rule 16.04 – A lawyer shall not borrow money from his client unless the client's

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

interests are fully protected by the nature of the case or by independent advice. Neither shall a lawyer lend money to a client except, when in the interest of justice, he has to advance necessary expenses in a legal matter he is handling for the client."

The Court has repeatedly emphasized that the relationship between a lawyer and his client is one imbued with trust and confidence. And as true as any natural tendency goes, this "trust and confidence" is prone to abuse. The rule against borrowing of money by a lawyer from his client is intended to prevent the lawyer from taking advantage of his influence over his client. The rule presumes that the client is disadvantaged by the lawyer's ability to use all the legal maneuverings to renege on his obligation.

As above-discussed, respondent borrowed money from complainants who were his clients and whose interests, by the lack of any security on the loan, were not fully protected. Owing to their trust and confidence in respondent, complainants relied solely on the former's word that he will return the money plus interest within five (5) days. However, respondent abused the same and reneged on his obligation, giving his previous clients the runaround up to this day. Accordingly, there is no quibble that respondent violated Rule 16.04 of the CPR.

In the same vein, the Court finds that respondent also violated Canon 7 of the CPR which reads:

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.

In unduly borrowing money from the complainants and by blatantly refusing to pay the same, respondent abused the trust and confidence reposed in him by his clients, and, in so doing, failed to uphold

the integrity and dignity of the legal profession. Thus, he should be equally held administratively liable on this score.

- **Jill M. Tormis Vs. Judge Meinrado P. Paredes** A.M. No. RTJ-13-2366. February 4, 2015

- o constitute misconduct, the act or acts must have a direct relation to and be connected with the performance of his official duties.²⁰ Considering that the acts complained of, the remarks against Judge Tormis and Francis, were made by Judge Paredes in his class discussions, they cannot be considered as "misconduct." They are simply not related to the discharge of his official functions as a judge. Thus, Judge Paredes cannot be held liable for misconduct, much less for grave misconduct.

- Discussion of a *subjudice matter*, however, is another thing.

- On *subjudice* matters, Section 4, Canon 3 of the New Code of Judicial Conduct provides:

-
- CANON 3
-
- IMPARTIALITY
-
- SEC. 4. Judges shall not knowingly, while a proceeding is before or could come before them, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process. **Nor shall judges make any comment in public or otherwise that might affect the fair trial of any person or issue.** (Emphasis supplied)

-
- The *subjudice* rule restricts comments and disclosures pertaining to the judicial proceedings in order to avoid

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

prejudging the issue, influencing the court, or obstructing the administration of justice.²¹ The rationale for the rule was spelled out in *Nestle Philippines, Inc. v. Sanchez*,²² where it was stated that it is a traditional conviction of civilized society everywhere that courts and juries, in the decision of issues of fact and law should be immune from every extraneous influence; that facts should be decided upon evidence produced in court; and that the determination of such facts should be uninfluenced by bias, prejudice or sympathies.²³

-
- Notably, when Judge Paredes discussed the marriage scams involving Judge Tormis in 2010, the investigation relative to the said case had not yet been concluded. In fact, the decision on the case was promulgated by the Court only on April 2, 2013.²⁴ In 2010, he still could not make comments on the administrative case to prevent any undue influence in its resolution. Commenting on the marriage scams, where Judge Tormis was one of the judges involved, was in contravention of the *subjudice* rule. Justice Diy was, therefore, correct in finding that Judge Paredes violated Section 4, Canon 3 of the New Code of Judicial Conduct.
-
- The Court shares the view of Justice Diy that although the reasons of Judge Paredes for discussing the marriage scams in his classes seemed noble, his objectives were carried out insensitively and in bad taste. The pendency of the administrative case of Judge Tormis and the publicity of the marriage scams did not give Judge Paredes unrestrained license to criticize

Judge Tormis in his class discussions. The publicity given to the investigation of the said scams and the fact that it was widely discussed in legal circles let people expressed critical opinions on the issue. There was no need for Judge Paredes to "rub salt to the wound,"²⁵ as Justice Diy put it.

-
- Judge Paredes in using intemperate language and unnecessary comments tending to project Judge Tormis as a corrupt and ignorant judge in his class discussions, was correctly found guilty of conduct unbecoming of a judge by Justice Dy.
-
- Indeed, the New Code of Judicial Conduct for the Philippine Judiciary requires judges to exemplify propriety at all times. Canon 4 instructs:
 -
 - CANON 4
 -
 - PROPRIETY
 -
 - SEC. 1. Judges shall avoid impropriety and the appearance of impropriety in all of their activities.
 -
 - xxx
 -
 - SEC. 2. As a subject of constant public scrutiny, judges must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, judges shall conduct themselves in a way that is consistent with the dignity of the judicial office.
 -
 - A judge should always conduct himself in a manner that would preserve the dignity, independence and respect for himself, the Court and the Judiciary as a whole. He must exhibit the hallmark judicial temperament of utmost sobriety

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

and self-restraint. He should choose his words and exercise more caution and control in expressing himself. In other words, a judge should possess the virtue of gravitas. Furthermore, a magistrate should not descend to the level of a sharp-tongued, ill-mannered petty tyrant by uttering harsh words, snide remarks and sarcastic comments. He is required to always be temperate, patient and courteous, both in conduct and in language.²⁶

-
- In this case, records show that Judge Paredes failed to observe the propriety required by the Code and to use temperate and courteous language befitting a magistrate. Indeed, Judge Paredes demonstrated conduct unbecoming of a judge.
-
- When Judge Paredes failed to restrain himself and included Francis, whose condition and personal circumstances, as properly observed by Justice Diy, had no relevance to the topic that was then being discussed in class, it strongly indicated his intention to taint their reputations.
-
- The inclusion of Judge Tormis and Francis in his class discussions was never denied by Judge Paredes who merely justified his action by invoking his right to freedom of expression. Section 6, Canon 4 of the New Code of Judicial Conduct recognizes that judges, like any other citizen, are entitled to freedom of expression. Such right, however, is not without limitation. Section 6, Canon 4 of the Code also imposes a correlative restriction on judges: in the exercise of their freedom of expression, they should always conduct themselves in a manner

that preserves the dignity of the judicial office and the impartiality and independence of the Judiciary. In the exercise of his right to freedom of expression, Judge Paredes should uphold the good image of the Judiciary of which he is a part. He should have avoided unnecessary and uncalled for remarks in his discussions and should have been more circumspect in his language. Being a judge, he is expected to act with greater circumspection and to speak with self-restraint. Verily, Judge Paredes fell short of this standard.

-
- The Court cannot sustain the assertion of Judge Paredes that he cannot be held administratively liable for his negative portrayal of Judge Tormis and Francis in his class discussions. Judge Paredes should be reminded of the ethical conduct expected of him as a judge not only in the performance of his judicial duties, but in his professional and private activities as well. Sections 1 and 2, Canon 2 of the Code mandates:
-
- CANON 2
-
- INTEGRITY
-
- **Integrity is essential not only to the proper discharge of the judicial office but also to the personal demeanor of judges.**
-
- **SECTION 1. Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer.**
-
- SECTION 2. The behavior and conduct of judges must reaffirm the people's faith in the integrity of

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

the judiciary. Justice must not merely be done but must also be seen to be done.

- (Emphases supplied)
-
- Any impropriety on the part of Judge Paredes, whether committed in or out of the court, should not be tolerated for he is not a judge only occasionally. It should be emphasized that the Code of Judicial Ethics mandates that the conduct of a judge must be free of a whiff of impropriety not only with respect to his performance of his judicial duties, but also to his behavior outside his *sala* and as a private individual. There is no dichotomy of morality, a public official is also judged by his private morals. The Code dictates that a judge, in order to promote public confidence in the integrity and impartiality of the judiciary, must behave with propriety at all times. A judge's official life cannot simply be detached or separated from his personal existence. Thus, being a subject of constant public scrutiny, a judge should freely and willingly accept restrictions on conduct that might be viewed as burdensome by the ordinary citizen. He should personify judicial integrity and exemplify honest public service. The personal behavior of a judge, both in the performance of official duties and in private life should be above suspicion.²⁷
-
- Regarding the act of receiving the cash bail bond in the *Guioguo* case, Justice Diy correctly found that it cannot be regarded as grave misconduct. The Court finds merit in the position of Judge Paredes that the approval, as well as the receipt, of the cash bail bond, was in accordance with the rules.

The Issue Before the Court

- The sole issue for the Court's resolution is whether or not Atty. Salve should be held administratively liable.

The Court's Ruling

The Court rules in the affirmative.

To recount, records reveal that Rodriguez used, among others, the Deed of Absolute Sale notarized by Atty. Salve to file an ejectment complaint against Salita. However, it must be remembered that Salita was merely made to sign such document as collateral for his loan and that he had already fully paid the same, as evidenced by the notarized Release of Real Estate Mortgage executed by Rodriguez herself. **Considering the circumstances, it is simply unfathomable for Salita to appear before Atty. Salve to have the said document notarized, as it will be detrimental to his own interests.** Hence, the Court finds that Atty. Salve notarized the pre-formed Deed of Absolute Sale **without Salita's presence before him.**

- **Melanio S. Salita Vs. Atty. Reynaldo T. Salve** A.C. No. 8101. February 4, 2015

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

Verily, 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 the truth of

what are stated therein. These acts of the affiants cannot be delegated because what are stated therein are facts they have personal knowledge of and are personally sworn to. Otherwise, their representative's names should appear in the said documents as the ones who executed the same.

The function of a notary public is, among others, to guard against any illegal or immoral arrangements. By affixing his notarial seal on the instrument, he converted the Deed of Absolute Sale, from a private document into a public document. In doing so, Atty. Salve, as borne from the records of this case, effectively proclaimed to the world that: (a) all the parties therein personally appeared before him; (b) they are all personally known to him; (c) they were the same persons who executed the instruments; (d) he inquired into the voluntariness of execution of the instrument; and (e) they acknowledged personally before him that they voluntarily and freely executed the same.

As a lawyer commissioned to be a notary public, Atty. Salve is mandated to discharge his sacred duties with faithful observance and utmost respect for the legal solemnity of an oath in an acknowledgment or jurat. Having failed in this regard, he must now accept the commensurate consequences of his professional indiscretion. His act of certifying under oath an irregular Deed of Absolute Sale without requiring the personal appearance of the persons executing the same constitutes gross negligence in the performance of duty as a notary public.

- **Spouses Willie and Amelia Umaguig Vs. Atty. Wallen R. De Vera** A.C. No.

10451. February 4, 2015

- The Issue Before the Court
- The sole issue in this case is whether or not Atty. De Vera should be held administratively liable.

Fundamental is the rule that in his dealings with his client and with the courts, every lawyer is expected to be honest, imbued with integrity, and trustworthy. These expectations, though high and demanding, are the professional and ethical burdens of every member of the Philippine Bar, for they have been given full expression in the Lawyer's Oath that every lawyer of this country has taken upon admission as a bona fide member of the Law Profession, thus:

The Lawyer's Oath enjoins every lawyer not only to obey the laws of the land but also to refrain from doing any falsehood in or out of court or from consenting to the doing of any in court, and to conduct himself according to the best of his knowledge and discretion with all good fidelity to the courts as well as to his clients. Every lawyer is a servant of the law, and has to observe and maintain the rule of law as well as be an exemplar worthy of emulation by others. It is by no means a coincidence, therefore, that the core values of honesty, integrity, and trustworthiness are emphatically reiterated by the Code of Professional Responsibility. In this light, Rule 10.01, Canon 10 of the Code of Professional Responsibility

provides that "[a] lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead, or allow the Court to be misled by any artifice."

After an assiduous examination of the records, the Court finds itself in complete agreement with the IBP Investigating Commissioner, who was affirmed by the IBP Board of Governors, in holding that Atty. De Vera sanctioned the submission of a falsified affidavit, i.e., Almera's

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

affidavit, before the court in his desire to beat the November 8, 2008 deadline for filing the election protest of Umaguig. To this, the Court is wont to sustain the IBP Investigating Commissioner's appreciation of Elsa Almera- Almacen's credibility as a witness given that nothing appears on record to seriously belie the same, and in recognition too of the fact that the IBP and its officers are in the best position to assess the witness's credibility during disciplinary proceedings, as they – similar to trial courts – are given the opportunity to first-hand observe their demeanor and comportment. The assertion that Atty. De Vera authorized the falsification of Almera's affidavit is rendered more believable by the absence of Atty. De Vera's comment on the same. In fact, in his Motion for Reconsideration of the IBP Board of Governors' Resolution dated December 14, 2012, no specific denial was proffered by Atty. De Vera on this score. Instead, he only asserted that he was not the one who notarized the subject affidavits but another notary public, who he does not even know or has seen in his entire life, and that he had no knowledge of the falsification of the impugned documents, much less of the participation in using the same. Unfortunately for Atty. De Vera, the Court views the same to be a mere general denial which cannot overcome Elsa Almera-Almacen's positive testimony that he indeed participated in the procurement of her signature and the signing of the affidavit, all in support of the claim of falsification.

The final lining to it all – for which the IBP Board of Governors rendered its recommendation – is that Almera's affidavit was submitted to the MeTC in the election protest case. The belated retraction of the questioned affidavits, through the Answer to Counterclaim with Omnibus Motion, does not, for this Court, merit significant consideration as its submission appears to be a mere afterthought, prompted only by the discovery of the falsification. Truth be told, it is highly improbable for Atty. De Vera to have remained in the dark about

the authenticity of the documents he himself submitted to the court when his professional duty requires him to represent his client with zeal and within the bounds of the law. Likewise, he is prohibited from handling any legal matter without adequate preparation or allow his client to dictate the procedure in handling the case.

On a related point, the Court deems it apt to clarify that the document captioned "Release Waiver & Discharge" which Atty. De Vera, in his Counter-Affidavit, claimed to have discharged him from all causes of action that complainants may have against him, such as the present case, would not deny the Court its power to sanction him administratively.

All told, Atty. De Vera is found guilty of violating the Lawyer's Oath and Rule 10.01, Canon 10 of the Code of Professional Responsibility by submitting a falsified document before a court.

- **Benito B. Nate Vs. Judge Lelu P. Contreras, Branch 43, Regional Trial Court, Virac, Catanduanes** A.M. No. RTJ-15-2406. February 18, 2015

- This administrative case concerns allegations that respondent Judge Lelu P. Contreras committed three counts of grave misconduct while she was still holding the position Clerk of Court VI of the Regional Trial Court in Iriga City, Camarines Sur (RTC-Iriga City). According to the complaint, respondent allegedly notarized an administrative complaint; certified a document (a labor complaint) as a true copy of the original; and appeared as counsel for her father in a hearing before the Integrated Bar of the Philippines (IBP). Clerks of court are indeed authorized to act as *ex officio*
- notaries public under the Administrative Code of 1987 in relation to the 2002 Revised Manual for Clerks of Court.

On the other hand, the Code of Conduct

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

and Ethical Standards for Public Officials and Employees prohibit public officials and employees from engaging in the private practice of their profession. The 2004 Code of Conduct for Court Personnel³ and the 2004 Rules on Notarial Practice were not yet in force when respondent committed the purported offenses

THE RULING

As more lawyers and regular notaries public populated far-flung areas, the need for ex officio notaries public diminished as did their power. Thus, ever since this clarification was made by the Court in the 1980 case *Borre v. Moya*, the power of ex officio notaries public have been limited to notarial acts connected to the exercise of their official functions and duties. This means that since the promulgation of that ruling, they have no longer had the authority to notarize documents that do not bear any relation to the performance of their official functions, such as contracts and other acts of conveyance, affidavits, certificates of candidacy, special powers of attorney, pleadings, sworn applications for business permits, or other similar instruments. To repeat, the notarization of documents that have no relation to the performance of their official functions is now considered to be beyond the scope of their authority as notaries public ex officio. Any one of them who does so would be committing an unauthorized notarial act, which amounts to engaging in the unauthorized practice of law and abuse of authority.

Consequently, the empowerment of ex officio notaries public to perform acts within the competency of regular notaries public – such as acknowledgments, oaths and affirmations, jurats, signature witnessing, copy certifications, and other acts authorized under the 2004 Rules on Notarial Practice – is now more of an exception rather than a general rule. They may perform notarial acts on such documents that bear no relation to their

official functions and duties only if (1) a certification is included in the notarized documents attesting to the lack of any other lawyer or notary public in the municipality or circuit; and (2) all notarial fees charged will be for the account of the government and turned over to the municipal treasurer.

Proceeding now to the first act complained about, we agree with the OCA findings that respondent's act of affixing her signature to the jurat portion of the administrative complaint prepared by her father had no direct relation to her work as the then clerk of court of RTC-Iriga City. Under Rule 139-B of the Rules of Court, the proceedings involving the disbarment and discipline of attorneys shall be conducted before the IBP. This means that clerks of court are not among the touchpoints in the regular procedure pertaining to complaints against an attorney. Neither may a pleading in a case involving lawyers be filed with the RTC.

We apply the same legal reasoning to the second act of respondent being complained about; that is, her certification of a copy of her sister-in-law's labor complaint. Respondent herself admits that the document was filed before the National Labor Relations Commission in Naga City, not the RTC-Iriga City. Thus, in the regular course of her duties, she would not have come across, encountered, or been in custody of the document. While we agree with her that clerks of court are allowed to perform the notarial act of copy certification, this act must still be connected to the exercise of their official functions and duties – meaning to say, it must be done in connection with public documents and records that are, by virtue of their position, in their custody.

With regard to the third act, we recognize that the Code of Conduct and Ethical Standards for Public Officials and Employees does allow for limited exceptions. Section 7(b) thereof in

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

relation to Rule X, Section 1(c) of its implementing rules, provides that public officials and employees are prohibited from engaging in the private practice of their profession unless authorized by the Constitution, law, or regulation; and under the condition that their practice will not conflict or tend to conflict with their official functions.

Respondent has satisfactorily proved that she was granted authority by this Court to "represent her father in Administrative Case No. 6089 provided that she files the corresponding leaves of absence on the scheduled dates of hearing of the case and that she will not use official time in preparing for the case." We thus agree with the OCA recommendation that she did not commit any irregularity when she represented her father before the IBP.

• **Roberto Bernardino Vs. Atty. Victor Rey Santos** A.C. No. 10583. February 18, 2015

These cases involve administrative Complaints against Atty. Victor Rey Santos for violation of Canon 10, Rule 10.01 and Canon 15, Rule 15.03 of the Code of Professional Responsibility.

Canon 15, Rule 15.03 of the Code of Professional Responsibility states:

CANON 15 — A lawyer shall observe candor, fairness and loyalty in all his dealings and transactions with his client.

...

Rule 15.03 — A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts.

The rule on conflict of interest is based on the fiduciary obligation in a lawyer-client relationship. Lawyers must treat all information received from their clients with utmost confidentiality in order to encourage clients to fully inform their counsels of the facts of their case.

Applying the test to determine whether

conflict of interest exists, respondent would necessarily refute Mariano Turla's claim that he is Rufina Turla's sole heir when he agreed to represent Marilu Turla. Worse, he knew that Mariano Turla was not the only heir.

However, Rule 15.03 provides for an exception, specifically, "by written consent of all concerned given after a full disclosure of the facts."

Respondent had the duty to inform Mariano Turla and Marilu Turla that there is a conflict of interest and to obtain their written consent.

Mariano Turla died on February 5, 2009, while respondent represented Marilu Turla in March 2009. It is understandable why respondent was unable to obtain Mariano Turla's consent. Still, respondent did not present evidence showing that he disclosed to Marilu Turla that he previously represented Mariano Turla and assisted him in executing the Affidavit of Self-Adjudication. Thus, the allegation of conflict of interest against respondent was sufficiently proven.

Likewise, we accept and adopt the IBP Board of Governors' finding that respondent violated Canon 10, Rule 10.01 of the Code of Professional Responsibility, which states:

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

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

As officers of the court, lawyers have the duty to uphold the rule of law. In doing so, lawyers are expected to be honest in all their dealings. Unfortunately, respondent was far from being honest. With full knowledge that Rufina Turla had another heir, he acceded to Mariano Turla's request to prepare the Affidavit of

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

Self-Adjudication.

This court notes that the wording of the IBP Board of Governors' Resolutions dated May 10, 2013 and March 22, 2014 seems to imply that it is the Integrated Bar of the Philippines that has the authority to impose sanctions on lawyers. This is wrong.

The authority to discipline members of the Bar is vested in this court under the 1987 Constitution:

The authority given to the Integrated Bar of the Philippines is based on Rule 139-B, Section 1 of the Rules of Court, which provides that "[p]roceedings for the disbarment, suspension or discipline of attorneys may be taken by the Supreme Court *motu proprio*, or by the Integrated Bar of the Philippines . . . upon the verified complaint of any person." However, this authority is only to assist this court with the investigation of the case, to determine factual findings, and to recommend, at best, the penalty that may be imposed on the erring lawyer.

Only this court can impose sanctions on members of the Bar. This disciplinary authority is granted by the Constitution and cannot be relinquished by this court. The Resolutions of the Integrated Bar of the Philippines are, at best, recommendatory, and its findings and recommendations should not be equated with Decisions and Resolutions rendered by this court.

- **Michael Ruby Vs. Atty. Erlinda B. Espejo and Atty. Rudolph Dilla Bayot** A.C. No. 10558. February 23, 2015

- Atty. Bayot claimed that he is not the counsel of record of the complainant in the case before the RTC. He pointed out that he had no part in the retainer agreement entered into by the complainant and Atty. Espejo. Thus, Atty. Bayot claimed, the complainant had no cause of action against him.
 - The Court does not agree.
 - It is undisputed that Atty. Espejo

was the counsel of record in the case that was filed in the RTC. Equally undisputed is the fact that it was only Atty. Espejo who signed the retainer agreement. However, the evidence on record, including Atty. Bayot's admissions, points to the conclusion that a lawyer-client relationship existed between him and the complainant.

- Atty. Bayot was the one who prepared the complaint that was filed with the RTC. He was likewise the one who prepared the motion to serve summons through publication. He likewise appeared as counsel for the complainant in the hearings of the case before the RTC. He likewise advised the complainant on the status of the case.
- More importantly, Atty. Bayot admitted that he received 8,000.00, which is part of the acceptance fee indicated in the retainer agreement, from the complainant. It is true that it was Atty. Espejo who asked the complainant to give Atty. Bayot the said amount. However, Atty. Bayot admitted that he accepted from the complainant the said 8,000.00 without even explaining what the said amount was for.

The foregoing circumstances clearly established that a lawyer-client relationship existed between Atty. Bayot and the complainant. "Documentary formalism is not an essential element in the employment of an attorney; the contract may be express 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." Further, acceptance of money from a client establishes an attorney-client relationship. Accordingly, as regards the case before the RTC, the complainant had two counsels – Atty. Espejo and Atty. Bayot.

The Code of Professional Responsibility

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

provides that:

CANON 16 – A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION.

Rule 16.01 – A lawyer shall account for all money or property collected or received for or from the client.

Rule 16.02 – A lawyer shall keep the funds of each client separate and apart from his own and those of others kept by him.

xxx x

CANON 18 – A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

xxx x

Rule 18.03 – A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

Rule 18.04 – A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.

Accordingly, Atty. Bayot owes fidelity to the cause of the complainant and is obliged to keep the latter informed of the status of his case. He is likewise bound to account for all money or property collected or received from the complainant. He may be held administratively liable for any inaptitude or negligence he may have had committed in his dealing with the complainant.

- **Dr. Elmar O. Perez Vs. Atty. Tristan A. Catindig and Atty. Karen E. Baydo** A.C. No. 5816. March 10, 2015

The Code of Professional Responsibility provides:

- Rule 1.01 – A lawyer shall not

engage in unlawful, dishonest, immoral or deceitful conduct.

- Canon 7 – A lawyer shall at all times uphold the integrity and dignity of the legal profession and support the activities of the Integrated Bar.
- Rule 7.03 – A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor should he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

"A lawyer may be suspended or disbarred for any misconduct showing any fault or deficiency in his moral character, honesty, probity or good demeanor." 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. Immoral conduct 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. The Court makes these distinctions, as the supreme penalty of disbarment arising from conduct requires grossly immoral, not simply immoral, conduct.

Contracting a marriage during the subsistence of a previous one amounts to a grossly immoral conduct.

The facts gathered from the evidence adduced by the parties and, ironically, from Atty. Catindig's own admission, indeed establish a pattern of conduct that is grossly immoral; it is not only corrupt and unprincipled, but reprehensible to a high degree.

Atty. Catindig was validly married to Gomez twice – a wedding in the Central Methodist Church in 1968, which was then followed by a Catholic wedding. In 1983, Atty. Catindig started pursuing Dr. Perez

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

when their paths crossed again. Curiously, 15 years into his first marriage and four children after, Atty. Catindig claimed that his first marriage was then already falling apart due to Gomez' serious intimacy problems.

A year after pursuing Dr. Perez, Atty. Catindig had a de facto separation from Gomez, dissolved their conjugal partnership of gains, obtained a divorce decree from a court in the Dominican Republic, and married Dr. Perez in the USA all in the same year. Atty. Catindig was so enchanted with Dr. Perez at that time that he moved heaven and earth just so he could marry her right away – a marriage that has at least a semblance of legality.

From his own admission, Atty. Catindig knew that the divorce decree he obtained from the court in the Dominican Republic was not recognized in our jurisdiction as he and Gomez were both Filipino citizens at that time. He knew that he was still validly married to Gomez; that he cannot marry anew unless his previous marriage be properly declared a nullity. Otherwise, his subsequent marriage would be void. This notwithstanding, he still married Dr. Perez. The foregoing circumstances seriously taint Atty. Catindig's sense of social propriety and moral values. It is a blatant and purposeful disregard of our laws on marriage.

It has also not escaped the attention of the Court that Atty. Catindig married Dr. Perez in the USA. Considering that Atty. Catindig knew that his previous marriage remained valid, the logical conclusion is that he wanted to marry Dr. Perez in the USA for the added security of avoiding any charge of bigamy by entering into the subsequent marriage outside Philippine jurisdiction.

Moreover, assuming arguendo that Atty. Catindig's claim is true, it matters not that Dr. Perez knew that their marriage is a nullity. The fact still remains that he

resorted to various legal strategies in order to render a façade of validity to his otherwise invalid marriage to Dr. Perez. Such act is, at the very least, so unprincipled that it is reprehensible to the highest degree.

Further, after 17 years of cohabiting with Dr. Perez, and despite the various legal actions he resorted to in order to give their union a semblance of validity, Atty. Catindig left her and their son. It was only at that time that he finally decided to properly seek the nullity of his first marriage to Gomez. Apparently, he was then already entranced with the much younger Atty. Baydo, an associate lawyer employed by his firm.

While the fact that Atty. Catindig decided to separate from Dr. Perez to pursue Atty. Baydo, in itself, cannot be considered a grossly immoral conduct, such fact forms part of the pattern showing his propensity towards immoral conduct. Lest it be misunderstood, the Court's finding of gross immoral conduct is hinged not on Atty. Catindig's desertion of Dr. Perez, but on his contracting of a subsequent marriage during the subsistence of his previous marriage to Gomez.

"The moral delinquency that affects the fitness of a member of the bar to continue as such includes conduct that outrages the generally accepted moral standards of the community, conduct for instance, which makes 'a mockery of the inviolable social institution of marriage.' In various cases, the Court has held that disbarment is warranted when a lawyer abandons his lawful wife and maintains an illicit relationship with another woman who has borne him a child.

- **Alvin S. Feliciano Vs. Atty. Carmelita Bautista-Lozada** A.C. No. 7593. March 11, 2015

- Indeed, this Court has the exclusive jurisdiction to regulate the practice of law. When this Court orders a lawyer suspended

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

from the practice of law, as in the instant case, the lawyer must desist from performing all functions requiring the application of legal knowledge within the period of suspension.

Suffice it to say that practice of law embraces "any activity, in or out of court, which requires the application of law, legal procedure, knowledge, training and experience." It includes "[performing] acts which are characteristics of the [legal] profession" or "[rendering any kind of] service [which] requires the use in any degree of legal knowledge or skill."

In the instant case, Atty. Lozada's guilt is undisputed. Based on the records, there is no doubt that Atty. Lozada's actuations, that is, in appearing and signing as counsel for and in behalf of her husband, conducting or offering stipulation/admission of facts, conducting direct and cross-examination, all constitute practice of law. Furthermore, the findings of the IBP would disclose that such actuations of Atty. Lozada of actively engaging in the practice of law in June-July 2007 were done within the period of her two (2)-year suspension considering that she was suspended from the practice of law by this Court in May 4, 2006. It would then appear that, at the very least, Atty. Lozada cannot practice law from 2006 to 2008. Thus, it is clear that when Atty. Lozada appeared for and in behalf of her husband in Civil Case No. 101-V-07 and actively participated in the proceedings therein in June-July 2007, or within the two (2)-year suspension, she, therefore, engaged in the unauthorized practice of law.

- **Spouses Rogelio Amatorio and Aida Amatorio Vs. Atty. Francisco Dy Yap and Atty. Whelma F. Siton-Yap** A.C. No. 5914. March 11, 2015

- This pertains to the complaint for disbarment filed by Spouses Rogelio Amatorio and Aida Amatorio (Aida) (complainants)

against Attys. Francisco Dy Yap (Francisco) and Whelma Siton-Yap (respondents) for violating Rules 1.01, 7.03, 10.01, 10.02 and 10.03 of the Code of Professional Responsibility.

The question now is whether the statements of the complainants, specifically contesting the truthfulness of the allegations hurled against the respondents in their own complaint for disbarment necessarily results to Francisco's absolution. The answer is in the negative.

It bears stressing that membership in the bar is a privilege burdened with conditions. It is bestowed upon individuals who are not only learned in law, but also known to possess good moral character. Lawyers should act and comport themselves with honesty and integrity in a manner beyond reproach, in order to promote the public's faith in the legal profession.

The Code of Professional Responsibility was promulgated to guide the members of the bar by informing them of the deportment expected of them in leading both their professional and private lives. Primarily, it aims to protect the integrity and nobility of the legal profession, to breed honest and principled lawyers and prune the association of the unworthy.

It is for the foregoing reason that the Court cannot simply yield to complainants' change of heart by refuting their own statements against the respondents and praying that the complaint for disbarment they filed be dismissed. It bears emphasizing that any misconduct on the part of the lawyer not only hurts the client's cause but is even more disparaging on the integrity of the legal profession itself. Thus, for tarnishing the reputation of the profession, a lawyer may still be disciplined notwithstanding the complainant's pardon or withdrawal from the case for as long as there is evidence

COMPILATION OF SUPREME COURT DECISIONS

(MARCH 2014-MARCH 2015)

to support any finding of culpability. A case for suspension or disbarment may proceed "regardless of interest or lack of interest of the complainants, if the facts proven so warrant." It follows that the withdrawal of the complainant from the case, or even the filing of an affidavit of desistance, does not conclude the administrative case against an erring lawyer.

This is so because the misconduct of a lawyer is deemed a violation of his oath to keep sacred the integrity of the profession for which he must be disciplined. "The power to discipline lawyers who are officers of the court may not be cut short by compromise and withdrawal of the charges. This is as it should be, especially when we consider that the law profession and its exercise is one impressed with public interest. Proceedings to discipline erring members of the bar are not instituted to protect and promote the public good only but also to maintain the dignity of the profession by the weeding out of those who have proven themselves unworthy thereof."

Therefore, in the instant case, the Court cannot just set aside the finding of culpability against the respondents merely because the complainants have decided to forgive them or settle matters amicably after the case was completely evaluated and reviewed by the IBP. The complainants' forgiveness or even withdrawal from the case does not ipso facto obliterate the misconduct committed by Francisco. To begin with, it is already too late in the day for the complainants to withdraw the disbarment case considering that they had already presented and supported their claims with convincing and credible evidence, and the IBP has promulgated a resolution on the basis thereof.

In the present case, it was clearly established that Francisco received 20,000.00 as initial payment from the complainants in compliance with the terms of their out-of-court settlement for the payment of the latter's outstanding

obligations. The amount was duly received and acknowledged by Francisco, who drafted the same in a paper with the letterhead of his own law office, a fact he did not deny. While the respondents deny that they told the complainants not to attend the pre-trial of the case anymore and that they will be the one to inform the trial court of the settlement, they did not bring the said agreement to the attention of the court. Thus, the trial court, oblivious of the settlement of the parties, rendered a judgment by default against the complainants. The respondents even filed a motion for execution of the decision but still did not inform the trial court of the out-of-court settlement between them and the complainants. They deliberately failed to mention this supervening event to the trial court, hence, violating the standards of honesty provided for in the Code of Professional Responsibility

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

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

xxx x

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

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