

**PAULINO VALENCIA, COMPLAINANT, VS. ATTY. ARSENIO FER. CABANTING, RESPONDENT.***Adm. Case No. 1302. April 26, 1991*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/0232e2c999ef/>**PER CURIAM:**

These consolidated administrative cases seek to disbar respondents Dionisio Antiniw, Arsenio Fer Cabanting and Eduardo Jovellanos (the last named, now an MCTC Judge) for grave malpractice and misconduct in the exercise of their legal profession committed in the following manner:

**1. Administrative Cases Nos. 1302 and 1391**

In 1933, complainant Paulino Valencia (Paulino in short) and his wife Romana allegedly bought a parcel of land, where they built their residential house, from a certain Serapia Raymundo, an heir of Pedro Raymundo the original owner. However, they failed to register the sale or secure a transfer certificate of title in their names.

Sometime in December, 1968, a conference was held in the house of Atty. Eduardo Jovellanos to settle the land dispute between Serapia Raymundo (Serapia in short) another heir of Pedro Raymundo, and the Valencia spouses since both were relatives and distant kin of Atty. Jovellanos. Serapia was willing to relinquish ownership if the Valencias could show documents evidencing ownership. Paulino exhibited a deed of sale written in the Ilocano dialect. However, Serapia claimed that the deed covered a different property. Paulino and Serapia were not able to settle their differences. (Report of Investigating Judge Catalino Castaneda, Jr., pp. 21-22).

On December 15, 1969 Serapia, assisted by Atty. Arsenio Fer Cabanting, filed a complaint against Paulino for the recovery of possession with damages. The case was docketed as Civil Case No. V-2170, entitled "Serapia Raymundo, Plaintiff, versus Paulino Valencia, Defendant." (Report, p. 11).

Summoned to plead in Civil Case No. V-2170, the Valencias engaged the services of Atty. Dionisio Antiniw. Atty. Antiniw advised them to present a notarized deed of sale in lieu of the private document written in Ilocano. For this purpose, Paulino gave Atty. Antiniw an amount of P200.00 to pay the person who would falsify the signature of the alleged vendor (Complaint, p. 2; Rollo, p. 7). A "Compraventa Definitiva" (Exh. B) was executed purporting to be a sale of the questioned lot.

On January 22, 1973, the Court of First Instance of Pangasinan, Branch V, rendered a decision in favor of plaintiff, Serapia Raymundo. The lower court expressed the belief that the said document is not authentic. (Report, p. 14)

Paulino, thereafter, filed a Petition for Certiorari, under Rule 65, with Preliminary Injunction before the Court of Appeals alleging that the trial court failed to provide a workable solution concerning his house. While the petition was pending, the trial court, on March 9, 1973, issued an order of execution stating that "the decision in this case has already become final and executory" (Exhibits 3 and 3-A). On March 14, 1973, a writ of execution was issued.

On March 20, 1973, Serapia sold 40 square meters of the litigated lot to Atty. Jovellanos and the remaining

portion she sold to her counsel, Atty. Arsenio Fer Cabanting, on April 25, 1973. (Annex "A" of Administrative Case No. 1302).

On March 4, 1974, Paulino filed a disbarment proceeding (docketed as Administrative Case No. 1302) against Atty. Cabanting on the ground that said counsel allegedly violated Article 1491 of the New Civil Code as well as Article II of the Canons of Professional Ethics, prohibiting the purchase of property under litigation by a counsel.

On March 21, 1974 the appellate court dismissed the petition of Paulino.

On October 14, 1974, Constanica Valencia, daughter of Paulino, filed a disbarment proceeding (docketed as Administrative Case No. 1391) against Atty. Dionisio Antiniw for his participation in the forgery of "Compraventa Definitiva" and its subsequent introduction as evidence for his client; and also, against Attys. Eduardo Jovellanos and Arsenio Cabanting for purchasing a litigated property allegedly in violation of Article 1491 of the New Civil Code; and against the three lawyers, for allegedly rigging Civil Case No. V-2170 against her parents.

On August 17, 1975, Constanica Valencia filed additional charges against Atty. Antiniw and Atty. Jovellanos as follows:

"1. AGAINST ATTY. DIONISIO ANTINIW:

"In the year 1973 Atty. Dionisio Antiniw fraudulently and in confabulation with one Lydia Bernal had a deed of sale, fabricated, executed and ratified before him as Notary Public by one Santiago Bernal in favor of Lydia Bernal when as a matter of fact said Santiago Bernal had died already about eight years before in the year 1965.

"2. AGAINST ATTY. EDUARDO JOVELLANOS:

"In the year 1954 Atty. Eduardo Jovellanos, fraudulently and in bad faith, in confabulation with Rosa de los Santos as vendee had, as Notary Public, executed and ratified before him, two (2) deeds of sale in favor of said Rosa de los Santos when as a matter of fact the said deeds were not in fact executed by the supposed vendor Rufino Rincoraya and so said Rufino Rincoraya had filed a Civil Case in Court to annul and declare void the said sales." (p. 7, Report)

2. Administrative Case No. 1543.

A deed of donation propter nuptias, involving the transfer of a piece of land by the grandparents of Lydia Bernal (complainant) in favor of her parents, was lost during the last world war. For this reason, her grandmother (the living donor) executed a deed of confirmation of the donation propter nuptias with renunciation of her rights over the property. (Complaint, p. 1). Notwithstanding the deed, her grandmother still offered to sell the same property in favor of the complainant, ostensibly to strengthen the deed of donation (to prevent others from claiming the property).

On consultation, Atty. Antiniw advised them to execute a deed of sale. Atty. Antiniw allegedly prepared and notarized the deed of sale in the name of her grandfather (deceased at the time of signing) with her grandmother's approval.

Felicidad Bernal-Duzon, her aunt who had a claim over the property, filed a complaint against her (Lydia Bernal) and her counsel, Atty. Antiniw for falsification of a public document. (Complaint, pp. 1-2) The fiscal exonerated the counsel for lack of evidence, while a case was filed in court against Lydia Bernal.

On October 3, 1975, Lydia Bernal filed a disbarment proceeding (docketed as Administrative Case No. 1543) against Atty. Antiniw for illegal acts and bad advice.

Pursuant to the resolution of the First Division of this Court dated December 9, 1974, the resolution of the Second Division dated March 3, 1975 and the two resolutions of the Second Division both dated December 3, 1975, Administrative Cases Nos. 1302, 1391 and 1543 were referred to the Office of the Solicitor General for investigation, report and recommendation.

Upon formal request of Constancia L. Valencia and Lydia Bernal dated March 3, 1976, all of these cases were ordered consolidated by Solicitor General Estelito P. Mendoza per his handwritten directive of March 9, 1976.

On April 12, 1988, We referred the investigation of these cases to the Integrated Bar of the Philippines. When Atty. Jovellanos was appointed as Municipal Circuit Trial Court Judge of Alcala-Bautista, Pangasinan, We referred the investigation of these cases to Acting Presiding Judge Cesar Mindaro, Regional Trial Court, Branch 50, Villasis, Pangasinan, for further investigation.

In view of the seriousness of the charge against the respondents and the alleged threats against the person of complainant Constancia L. Valencia, We directed the transfer of investigation to the Regional Trial Court of Manila.

The three administrative cases were raffled to Branch XVII of the Regional Trial Court of Manila, under the sala of Judge Catalino Castaneda, Jr.

After investigation, Judge Catalino Castaneda, Jr., recommended the dismissal of cases against Atty. Jovellanos and Atty. Arsenio Fer Cabanting; dismissal of Administrative Case No. 1543 and the additional charges in Administrative Case No. 1391 against Antiniw and Judge Jovellanos; however, he recommended the suspension of Atty. Antiniw from the practice of law for six months finding him guilty of malpractice in falsifying the "Compraventa Definitiva."

The simplified issues of these consolidated cases are:

- I. Whether or not Atty. Cabanting purchased the subject property in violation of Art. 1491 of the New Civil Code.
- II. Whether or not Attys. Antiniw and Jovellanos are guilty of malpractice in falsifying notarial documents.
- III. Whether or not the three lawyers connived in rigging Civil Case No. V-2170.

## I

Under Article 1491 of the New Civil Code:

"The following persons cannot acquire by purchase, even at a public or judicial auction, either in person or through the mediation of another:

xxx xxx xxx

(5) xxx this prohibition includes the act of acquiring by assignment and shall apply to lawyers, with respect to the property and rights which may be the object of any litigation in which they may take part by virtue of their profession."

Public policy prohibits the transactions in view of the fiduciary relationship involved. It is intended to curtail any undue influence of the lawyer upon his client. Greed may get the better of the sentiments of loyalty and disinterestedness. Any violation of this prohibition would constitute malpractice (In re Attorney Melchor Ruste, 40 O.G. p. 78) and is a ground for suspension. (Beltran vs. Fernandez, 70 Phil. 248)

Art. 1491, prohibiting the sale to the counsel concerned, applies only while the litigation is pending. (Director of

Lands vs. Adaba, 88 SCRA 513; Hernandez vs. Villanueva, 40 Phil. 775).

In the case at bar, while it is true that Atty. Arsenio Fer Cabanting purchased the lot after finality of judgment, there was still a pending certiorari proceeding. A thing is said to be in litigation not only if there is some contest or litigation over it in court, but also from the moment that it becomes subject to the judicial action of the judge. (Gan Tingco vs. Pabinguit, 35 Phil. 81). Logic dictates, in certiorari proceedings, that the appellate court may either grant or dismiss the petition. Hence, it is not safe to conclude, for purposes under Art. 1491 that the litigation has terminated when the judgment of the trial court become final while a certiorari connected therewith is still in progress. Thus, purchase of the property by Atty. Cabanting in this case constitutes malpractice in violation of Art. 1491 and the Canons of Professional Ethics. Clearly, this malpractice is a ground for suspension.

The sale in favor of Atty. Jovellanos does not constitute malpractice. There was no attorney-client relationship between Serapia and Atty. Jovellanos, considering that the latter did not take part as counsel in Civil Case No. V-2170. The transaction is not covered by Art. 1491 nor by the Canons adverted to.

## II

It is asserted by Paulino that Atty. Antiniw asked for and received the sum of P200.00 in consideration of his executing the document "Compraventa Definitiva" which would show that Paulino bought the property. This charge, Atty. Antiniw simply denied. It is settled jurisprudence that affirmative testimony is given greater weight than negative testimony (Bayasen vs. CA, L-25785, Feb. 26, 1981; Vda. de Ramos vs. CA, et al., L-40804, Jan. 31, 1978). When an individual's integrity is challenged by evidence, it is not enough that he deny the charges against him; he must meet the issue and overcome the evidence for the relator and show proofs that he still maintains the highest degree of morality and integrity which at all time is expected of him. (De los Reyes vs. Aznar, Adm. Case No. 1334, Nov. 28, 1989).

Although Paulino was a common farmer who finished only Grade IV, his testimony, even if not corroborated by another witness, deserves credence and can be relied upon. His declaration dwelt on a subject which was so delicate and confidential that it would be difficult to believe that he fabricated his evidence.

There is a clear preponderant evidence that Atty. Antiniw committed falsification of a deed of sale, and its subsequent introduction in court prejudices his prime duty in the administration of justice as an officer of the court.

A lawyer owes entire devotion to the interest of his client (Santos vs. Dichoso, 84 SCRA 622), but not at the expense of truth. (Cosmos Foundry Shopworkers Union vs. La Bu, 63 SCRA 313). The first duty of a lawyer is not to his client but to the administration of justice. (Lubiano vs. Gordalla, 115 SCRA 459) To that end, his client's success is wholly subordinate. His conduct ought to and must always be scrupulously observant of law and ethics. While a lawyer must advocate his client's cause in utmost earnestness and with the maximum skill he can marshal, he is not at liberty to resort to illegal means for his client's interest. It is the duty of an attorney to employ, for the purpose of maintaining the causes confided to him, such means as are consistent with truth and honor. (Pangan vs. Ramos, 93 SCRA 87).

Membership in the Bar is a privilege burdened with conditions. By far, the most important of them is mindfulness that a lawyer is an officer of the court. (In re: Ivan T. Publico, 102 SCRA 722). This Court may suspend or disbar a lawyer whose acts show his unfitness to continue as a member of the Bar. (Halili vs. CIR, 136 SCRA 112). Disbarment, therefore, is not meant as a punishment depriving him of a source of livelihood but is rather intended to protect the administration of justice by requiring that those who exercise this function should be competent, honorable and reliable in order that courts and the public may rightly repose confidence in them. (Noriega vs.

Sison, 125 SCRA 293). Atty. Antiniw failed to live up to the high standards of the law profession.

The other charges of malpractice against Atty. Antiniw and Atty. Jovellanos should be dismissed for lack of evidence.

During the proceedings in Administrative Case No. 1543, Lydia Bernal testified in full on direct examination, but she never submitted herself for cross-examination. Several subpoenas for cross-examination were unheeded. She eventually requested the withdrawal of her complaint.

Procedural due process demands that respondent lawyer should be given an opportunity to cross-examine the witnesses against him. He enjoys the legal presumption that he is innocent of the charges against him until the contrary is proved. (*Santos vs. Dichoso*, 84 SCRA 622). The case must be established by clear, convincing and satisfactory proof. (*Camus vs. Diaz*, Adm. Case No. 1616, February 9, 1989). Since Atty. Antiniw was not accorded this procedural due process, it is but proper that the direct testimony of Lydia Bernal be stricken out.

In view also of the affidavit of desistance executed by the complainant, Administrative Case No. 1543 should be dismissed. Although the filing of an affidavit of desistance by complainant for lack of interest does not ipso facto result in the termination of a case for suspension or disbarment of an erring lawyer (*Munar vs. Flores*, 122 SCRA 448), We are constrained in the case at bar, to dismiss the same because there was no evidence to substantiate the charges.

The additional charge against Atty. Antiniw in Administrative Case No. 1391 is predicated on the information furnished by Lydia Bernal. It was not based on the personal knowledge of Constancia L. Valencia; hence, hearsay. "Any evidence, whether oral or documentary, is hearsay if its probative value is not based on the personal knowledge of the witness but on the knowledge of some other person not on the witness stand." (*Regalado*, Remedial Law Compendium, 6[th] ed., vol. 2, 1989, p. 486). Being hearsay, the evidence presented is inadmissible.

The additional charge filed by Constancia L. Valencia against Atty. Jovellanos in Administrative Case No. 1391 was not proved at all. Complainant failed to prove her additional charges.

### III

There is no evidence on record that the three lawyers involved in these administrative cases conspired in executing the falsified "Compraventa Definitiva" and rigged the Civil Case No. V-2170.

Atty. Jovellanos is a distant kin of the Raymundos and Valencias. In fact, he and the Valencias are neighbors and only two meters separate their houses. It would not be believable that Atty. Jovellanos, a practicing lawyer, would hold a meeting with the heirs of Pedro Raymundo in his house with the intention of inducing them to sue the Valencias. Atty. Jovellanos even tried to settle the differences between the parties in a meeting held in his house. He appeared in Civil Case No. V-2170 as an involuntary witness to attest to the holding of the conference.

Besides, the camaraderie among lawyers is not proof of conspiracy, but a sign of brotherhood among them. One of the four-fold duties of a lawyer is his duty to the Bar. A lawyer should treat the opposing counsel, and his brethren in the law profession, with courtesy, dignity and civility. They may "do as adversaries do in law: strive mightily but (they) eat and drink as friends." This friendship does not connote conspiracy.

WHEREFORE, judgment is hereby rendered declaring: 1. Dionisio Antiniw DISBARRED from the practice of law, and his name is ordered stricken off from the roll of attorneys; 2. Arsenio Fer Cabanting SUSPENDED from the practice of law for six months from finality of this judgment; and 3. Administrative Case No. 1391 against Attorney Eduardo Jovellanos and additional charges therein, and Administrative Case No. 1543 DISMISSED.

**SO ORDERED.**

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Grino-Aquino, Medialdea, Regalado, and Davide, Jr., JJ., concur.

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