

ATTY. MYLENE S. YUMUL-ESPINA, COMPLAINANT, VS. ATTY. BENEDICTO D. TABAQUERO, RESPONDENT.*A.C. No. 11238. September 21, 2016*

Ponente: JARDELEZA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/a-c-no-11238/>**JARDELEZA, J.:**

Before us is a complaint for disbarment[1] filed by Arty. Mylene S. Yumul-Espina (complainant) against Atty. Benedicto D. Tabaquero (respondent) before the Integrated Bar of the Philippines (IBP). Complainant charged respondent with violating Canon 1[2] of the Code of Professional Responsibility (CPR), specifically Rules 1.01,[3] 1.02[4] and 1.03.[5]

Facts

Shirley Atkinson (Shirley) is married to Derek Atkinson (Derek), a British Citizen. She purchased two properties (covered by Transfer Certificate of Title [TCT] No. 142730 and TCT No. 151683), both of which she intended to mortgage. In order to facilitate the mortgage on TCT No. 142730, Derek allegedly executed an Affidavit of Waiver of Rights which he subscribed before complainant (as a notary public) on October 25, 1999. Thus, Shirley was able to mortgage TCT No. 142730 without the signature of marital consent of Derek Atkinson.[6]

Derek, however, claims that he could not have executed the Affidavit of Waiver of Rights because he was out of the country on October 25, 1999, and therefore, could not have personally appeared before complainant on that date.[7] Thus, he filed falsification cases against complainant and Shirley, respectively.[8]

During the pendency of these criminal cases, complainant filed a complaint-affidavit before the IBP Commission on Bar Discipline against respondent.[9] She alleges that in representing Derek in the criminal cases against her for "Falsification of Document by a Notary Public," and against Shirley for "Falsification of Public Document," respondent violated the CPR.[10] She claims that respondent prosecuted the criminal complaints against her and Shirley in order to assert his client's non-existent rights and interest as owner of the property, blatantly disregarding the constitutional prohibition on foreigners from acquiring private lands in the Philippines.[11]

In his Answer,[12] respondent argues that he was engaged as counsel for Derek long after the acquisition of the disputed properties. He never had any participation with respect to the purchase of the two properties.[13] Upon Derek's instruction, direction and decision, respondent filed the cases (against Shirley and complainant) after Derek learned about the mortgages and the execution of the Affidavits of Waiver of Rights he allegedly subscribed before complainant.[14]

According to respondent, the issue being raised by complainant in the disbarment proceeding is the same issue raised by Maria Luisa Tanghal, one of the defendants in the petition for annulment of the extra-judicial foreclosure filed by Derek.[15] In that case, Tanghal filed a Motion to Dismiss on the ground that Derek cannot own lands in the Philippines. The Regional Trial Court of Parañaque City denied Tanghal's motion, and ruled that Derek's claim is not actually a claim of ownership over the said property but a claim on his funds.[16] Respondent

also denied committing any violation of the canons of the CPR. He countered that the complainant is bitter and vengeful on account of Derek's filing of the criminal complaint against her.[17]

Investigation ensued and the IBP issued a Notice of Mandatory Conference/Hearing[18] on June 19, 2014. Respondent submitted his Mandatory Conference Brief[19] on July 10, 2014. In his brief, he alleged (as a counter-complaint) that complainant violated her duties under the Notarial Law.[20] Complainant submitted her Mandatory Conference Brief[21] on July 15, 2014 reiterating the salient points in her complaint.

In respondent's Rejoinder to Reply,[22] he submitted that the constitutional prohibition is not germane, material or relevant to the criminal complaints his client filed against complainant and Shirley. The basis of these criminal complaints is the falsified signature in the affidavit allegedly executed by Derek.[23] As in his counter-complaint, respondent, citing *Social Security Commission v. Corral*,[24] reiterated complainant's breach of the notarial law:[25]

x x x A notary public is duty bound to require the person executing a document to be personally present, to swear before him that he is that person and ask the latter if he has voluntarily and freely executed the same x x x.[26]

Meanwhile, pending resolution of the case by the Investigating Commissioner, complainant executed and filed an Affidavit of Desistance[27] which recited, thus:

3. Moreover, consistent with charity, goodwill and the Christmas spirit, I hereby desist and withdraw the averments I alleged in my Complaint-Affidavit which I filed in connection with above-captioned case. I further request this Honorable Commission to consider my Complaint-Affidavit as withdrawn from the records of above-captioned case, with full knowledge of the legal and other consequences thereof;
4. This Affidavit of Desistance may be pleaded as a bar to any existing and/or future criminal, civil and/or administrative cases filed or will be filed against Respondent for the same acts subject of the present Complaint; and
5. I am hereby executing this Affidavit for the purpose of attesting to the truth of the foregoing averments, for the purpose of dismissing above-captioned case and for other legal intents and purposes.

Respondent also filed and executed his Affidavit of Desistance/Withdrawal[28] which stated, thus:

2. I hereby desist and/or withdraw my [unsworn] Counter-Complaint mentioned in my Mandatory Conference Brief dated [July 9,] 2014 and my [unsworn] averments/allegations in my Rejoinder to Reply dated [September 10,] 2014 regarding the alleged violation of duties and/or non-compliance of the Notarial Law by Complainant and request this Honorable Office to consider the same as withdrawn from the records of [the] above-captioned case, with full knowledge of the legal and other consequences thereof;
3. I expressly declare that the incident was the result of a misapprehension of facts and a simple misunderstanding between Complainant and me;
4. This Affidavit of Desistance and/or Withdrawal may be pleaded as a bar to any existing and/or future criminal, civil and/or administrative cases filed or will be filed against Complainant for the same acts subject of above-captioned case[.]

Thus, Investigating Commissioner Eduardo R. Robles, in his Report and Recommendation,[29] recommended that the complaint and counter-complaint be dismissed upon the "prodding of the parties." He reasoned that the Commission cannot possibly resolve the controversies after the revelations made by the parties in their Affidavit of Desistance and Affidavit of Desistance/Withdrawal.[30]

On April 18, 2015, the IBP Board of Governors (IBP Board) issued Resolution No. XXI-2015-283,[31] adopting

and approving the recommendation to dismiss the complaint and counter-complaint against the parties.

Our Ruling

We do not agree with the ruling of the IBP Board. The cases should not have been dismissed on the basis of the affidavits of desistance.

Disbarment proceedings are *sui generis*.^[32] Their main purpose is mainly to determine the fitness of a lawyer to continue acting as an officer of the court and as participant in the dispensation of justice.^[33] Hence, the underlying motives of the complainant are unimportant and of little relevance.^[34]

We have consistently looked with disfavor upon affidavits of desistance filed in disbarment proceedings.^[35] Administrative proceedings are imbued with public interest.^[36] Hence, these proceedings should not be made to depend on the whims and caprices of complainants who are, in a real sense, only witnesses.^[37] In *Garrido v. Garrido*,^[38] we held:

Laws dealing with double jeopardy or with procedure—such as the verification of pleadings and prejudicial questions, or in this case, prescription of offenses or the filing of affidavits of desistance by the complainant—do not apply in the determination of a lawyer's qualifications and fitness for membership in the Bar.^[39]

We emphasize that a case for disbarment or suspension is not meant to grant relief to a complainant as in a civil case, but is intended to cleanse the ranks of the legal profession of its undesirable members in order to protect the public and the courts.^[40]

Although there are times when we dismissed the case after the complainant withdrew his complaint,^[41] the dismissal was not due to our acquiescence to the complainant's wish but because of the absence of any competent and credible evidence by reason of the desistance.^[42]

In *Gaviola v. Salcedo*,^[43] we clarified that the filing of an affidavit of desistance by the complainant for lack of interest does not *ipso facto* result in the termination of an administrative case for suspension or disbarment of an erring lawyer.^[44] However, we were constrained to dismiss the case against respondent Salcedo because the charges cannot be proved without the evidence of the complainant and her witnesses.^[45]

In *Firman v. Crisanto*,^[46] the complainant alleged that respondent lawyer had carnal relations with her when she was below 18 years of age although he was a married man.^[47] Since the only evidence available is the complainant's testimony and the complaint was withdrawn before any investigation was made, the charge can no longer hold water. In the absence of any evidence, it is of course inevitable that the case should be dismissed.^[48]

The foregoing decisions reflect the principle that in disbarment cases, the burden of proof rests upon the complainant,^[49] and the legal presumption that a lawyer is innocent of the charges proffered against him until the contrary is proved; and that he regularly performed his duty as an officer of the Court in accordance with his oath.^[50] It follows therefore that if the complaint was withdrawn (in this case through desistance) immediately after it was filed, it would be difficult to investigate, or prove the charge.

However, the facts of these cited cases differ from the case before this court. Unlike in the cited cases, the affidavits of desistance in this case were submitted after the investigation was completed: Thus, the issues in the complaint and in the counter-complaint (with their corresponding evidentiary Support) have been duly ventilated in the pleadings submitted by the parties,^[51] and during the conferences and hearings^[52] held before the Investigating Commissioner. In fact, the only matter lacking in the proceeding is the Investigating Commissioner's report and recommendation. We also note one peculiarity in this case, in contrast to the cited

cases. In this case, there is already a finding of probable cause against complainant for falsification of public document.[53] Therefore, unlike the aforementioned cases, it cannot be said that the complaint and counter-complaint should be dismissed for lack of evidence to investigate or prove the charge.

Further, Section 5, Rule 139-B of the Rules of Court provides:

Sec. 5. Service or dismissal. - x x x

No investigation shall be interrupted or terminated by reason of the desistance, settlement, compromise, restitution, withdrawal of the charges or failure of the complainant to prosecute the same, unless the Supreme Court *motu proprio* or upon recommendation of the IBP Board of Governors, determines that there is no compelling reason to continue with the disbarment or suspension proceedings against the respondent. (Emphasis supplied.)

The report and recommendation did not find that there is no compelling reason to continue the proceedings against petitioner and respondent. It merely stated that "[b]esides, this Commission cannot possibly resolve the controversies after the revelations made by the parties in their Affidavit of Desistance and Affidavit of Desistance/Withdrawal. Accordingly, it is hereby recommended that, upon the prodding of the parties themselves, the complaint and the counter-complaint be dismissed." [54]

The IBP Board should not have dismissed the cases on the basis of the affidavits of desistance filed by the parties.

We now come to the merits of the complaint and the counter-complaint.

We find respondent not guilty of violations of Canon 1 of the Code of Professional Responsibility. Complainant cannot argue that the intention behind the falsification cases filed by respondent (as counsel of Derek) against her and Shirley, respectively, was to circumvent the constitutional prohibition on foreign ownership of lands in the Philippines. In these cases, Derek did not seek that the ownership of the lands be conveyed to him.[55] The basis of these criminal complaints is complainant's act of making it appear that Derek was present, or participated in the execution of the affidavits. The constitutional prohibition is therefore irrelevant in these criminal complaints.

However, the counter-complaint against complainant, for violation of the Notarial Law, is meritorious. The evidence on record sufficiently showed that Derek could not have appeared before complainant on October 25, 1999, the day the Affidavit of Waiver was notarized. Derek's passport entries[56] and the certification[57] from the Bureau of Immigration show that after Derek departed from the Philippines for United Kingdom on September 27, 1999, his next arrival in the Philippines was on December 17, 1999.

Records show that complainant failed to address this issue in any of the pleadings she filed in the proceedings before the IBP. The failure is despite the opportunities where complainant could have refuted the allegation.[58] We note that the only instance where it appeared that complainant may have addressed this issue was when respondent referred[59] to complainant's claim in his Comment/Opposition to the Petition for Review before the Department of Justice (DOJ).[60] We further note that the Comment/Opposition was an attachment to complainant's complaint-affidavit to prove merely that respondent continued to represent Derek in the proceedings before the DOJ.[61] The relevant portion provides:

x x x [A]bout the claim of [complainant] that all what she could remember is that there was a man who appeared a foreigner (sic) and claimed to be [Derek]. Noticeably and conformably to the Notarial Law, there is need for personal appearance, positive proofs of identity for the notarization of the document.

What was presented as identification and the claim that a foreigner appeared before her is largely on the basis of a Community Tax Certificate. The Community Tax Certificate that appeared on the Affidavit of Waiver of Rights, and surprisingly obtained by a foreigner who is not qualified to have a Community Tax Certificate, not

being a Filipino citizen but a visitor, is entered as having been paid for and issued on September 28, 1999.

This is preposterous in that as the Community Tax Certificate was procured, issued and released on September 28, 1999, [Derek] was not also in the Philippines. x x x[62]

Thus, complainant's act of notarizing the document without the presence of the affiant is prohibited by the 2004 Rules on Notarial Practice[63] which provides:

Rule IV. Powers and Limitations of Notaries Public

x x x

Sec. 2. Prohibitions. x x x

(b)

A person shall not perform a notarial act if the person involved as signatory to the instrument or document -

(1)

is not in the notary's presence personally at the time of the notarization; and

(2)

is not personally known to the notary public or otherwise identified by the notary public or otherwise identified by the notary public through competent evidence of identity as defined by these Rules.

This is the most common violation committed by lawyers. To deter further violations, and in line with existing jurisprudence, we impose the penalties of suspension from the practice of law for six (6) months, revocation of incumbent commission as a notary public, and disqualification from being commissioned as a notary public for a period of two (2) years.

Further, we note that the result of this case cannot affect the pending criminal cases involving the parties. Administrative cases against lawyers belong to a class of their own. They are distinct from and they may proceed independently of civil and criminal cases.[64]

Finally, we remind complainants, especially members of the bar, to be more circumspect in filing disbarment complaints. A complaint filed solely as a retaliatory measure[65] or by reason of mistake, lack of communication[66] or a misapprehension of facts as in this case, achieves nothing except to waste the time of the IBP and this Court.

WHEREFORE, we SET ASIDE Resolution No. XXI-2015-283 of the IBP Board of Governors insofar as it dismissed the cases against complainant and respondent because of the affidavits of desistance. Based on the merits of the cases filed against the parties, we hold that:

(1)

The complaint against respondent Atty. Benedicto D. Tabaquero is DISMISSED for lack of merit.

(2)

Complainant Atty. Mylene S. Yumul-Espina is GUILTY of violating the 2004 Rules on Notarial Practice. Accordingly, the Court hereby SUSPENDS her from the practice of law for six (6) months; REVOKES her incumbent commission as a notary public; and PROHIBITS her from being commissioned as a notary public for two (2) years, effective immediately. She is WARNED that a repetition of the same offense or similar acts in the future shall be dealt with more severely.[67]

SO ORDERED.

Velasco, Jr., (Chairperson), Peralta, Perez, and Reyes, JJ., concur.

October 20, 2016

NOTICE OF JUDGMENT

Sirs / Mesdames:

Please take notice that on September 21, 2016 a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on October 20, 2016 at 1:55 p.m.

Very truly yours,

(SGD)

WILFREDO V. LAPITAN

Division Clerk of Court

[1] Rollo, pp. 2-13.

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

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

[4] 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.

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

[6] Rollo, pp. 40-41.

[7] Id. at 81.

[8] Falsification of Public Documents by a Private Individual against Shirley Atkinson, Criminal Case No. 13-0449; and Falsification of Public Document by a Notary Public against complainant, Criminal Case No. 13-1324. See Id. at 5-6.

[9] Id. at 2.

[10] Id. at 10-11.

[11] Id. at 6.

[12] Id. at 40-51.

[13] Id. at 42.

[14] Id. at 43-44.

[15] Id. at 46.

[16] Id. at 46, 108.

[17] Id. at 47.

[18] Id. at 117.

[19] Id. at 118-125.

[20] Id. at 122.

[21] Id. at 128-132.

[22] Id. at 276-283.

[23] Id. at 278.

[24] A.C. No. 6249, October 14, 2004, 440 SCRA 291.

[25] Rollo, p. 280.

[26] Id.

[27] Rollo, pp. 303-304.

[28] Id. at 296-297.

[29] Id. at 313-315.

[30] Id. at 315.

[31] Id. at 311-312.

[32] Guarin v. Limpin, A.C. No. 10576, January 14, 2015, 745 SCRA 459, 464; Cristobal v. Renta, A.C. No. 9925, September 17, 2014, 735 SCRA 247, 249; Ylaya v. Gacott, A.C. No. 6475, January 30, 2013, 689 SCRA 452, 467; Ventura v. Samson, A.C. No. 9608, November 27, 2012, 686 SCRA 430, 443.

[33] Office of the Court Administrator v. Liangco, A.C. No. 5355, 662 SCRA 103, December 13, 2011, 662 SCRA 103, 121.

[34] Id.

[35] See Ventura v. Samson, *supra*; Gonzales v. Cabucana, Jr., A.C. No. 6836, January 23, 2006, 479 SCRA 320; Rangwani v. Diño, A.C. No. 5454, November 23, 2004, 443 SCRA 408; Reyes-Domingo v. Morales, A.M. No. P-99-1285, October 4, 2000, 342 SCRA 6; Bulado v. Tin, Jr., A.M. No. P-96-1211, March 31, 2000, 329 SCRA 308; Gacho v. Fuentes, Jr., A.M. No. P-98-1265, June 29, 1998, 291 SCRA 474; Dagsa-an v. Conag, A.M. No. P-98-1269, May 13, 1998, 290 SCRA 12; Estreller v. Manatad, Jr., A.M. No. P-94-1034, February 21, 1997, 268 SCRA 608; Sandoval v. Manalo, A.M. No. MTJ-96-1080, August 22, 1996, 260 SCRA 611; Zamora v. Jumamoy, A.M. No. P-93-781, December 2, 1994, 238 SCRA 587; Sy v. Academia, A.M. No. P-87-72, July 3, 1991, 198 SCRA 705; Bais v. Tugaoen, A.M. No. 1294-MJ, March 23, 1979, 89 SCRA 101; and Bolivar v. Simbol, A.C. No. 377, April 29, 1966, 16 SCRA 623.

[36] Gonzales v. Cabucana, Jr., *supra* at 332.

[37] Rangwani v. Diño, *supra* at 417.

[38] A.C. No. 6593, February 4, 2010, 611 SCRA 508.

[39] *Id.* at 515-516. Emphasis supplied.

[40] Ventura v. Samson, *supra* at 443.

[41] See Ocampo v. Dominguez, A.C. No. 1006, October 17, 1980, 100 SCRA 308; Santos v. De Guzman, A.C. No. 1527, June 19, 1980, 98 SCRA 59; and Santiago v. Bustamante, A.C. No. 827, April 29, 1977, 76 SCRA 527.

[42] Ocampo v. Dominguez, *supra* at 311-312.

[43] A.C. No. 3037, May 20, 2004, 428 SCRA 563.

[44] *Id.* at 565, citing Munar v. Flores, A.C. No. 2112, May 30, 1983, 122 SCRA 448, 452.

[45] *Id.* at 566.

[46] A.C. No. 1471, January 11, 1979, 88 SCRA 18.

[47] *Id.* at 18-19.

[48] *Id.* at 20.

[49] Villamor, Jr. v. Santos, A.C. No. 9868, April 22, 2015, 757 SCRA 1, 7. See also Amatorio v. Yap, A.C. No. 5914, March 11, 2015, 752 SCRA 230; Lanuza v. Magsalin III, A.C. No. 7687, December 3, 2014, 743 SCRA 453; and Joven v. Cruz, A.C. No. 7686, July 31, 2013, 702 SCRA 545.

[50] Guarin v. Limpin, *supra* note 32. See also Lanuza v. Magsalin III, *supra*; Jimenez v. Verano, Jr., A.C. No. 8108, July 15, 2014, 730 SCRA 53; Ylaya v. Gacott, *supra* note 32; and Arma v. Montevilla, A.C. No. 4829, July 21, 2008, 559 SCRA 1.

[51] Rollo, pp. 2-13, 40-51, 140-153, 223-238, 267-273, 276-283.

[52] *Id.* at 134-135, 294.

[53] *Id.* at 89-93.

[54] *Id.* at 315.

[55] *Id.* at 77-83, 96-107.

[56] *Id.* at 110-111.

[57] *Id.* at 112-115.

[58] See Order dated July 31, 2014 of the IBP Commissioner, *id.* at 135; and Complainant's Reply (to Respondent's Position Paper), *id.* at 267.

[59] *Id.* at 44-45.

[60] *Id.* at 24-38.

[61] *Id.* at 6.

[62] *Id.* at 27.

[63] A.M. No. 02-8-13-SC, August 1, 2004.

[64] *Guevarra v. Eala*, A.C. No. 7136, August 1, 2007, 529 SCRA 1, 14, citing *Gatchalian Promotions Talents Pool, Inc. v. Naldoza*, A.C. No. 4017, September 29, 1999, 315 SCRA 406. See also *Mecaral v. Velasquez*, A.C. No. 8392, June 29, 2010, 622 SCRA 1.

[65] *Santiago v. Bustamante*, *supra* note 41.

[66] *Santos v. de Guzman*, *supra* note 41.

[67] See *Sappayani v. Gasmen*, A.C. No. 7073, September 1, 2015; *Sultan v. Macabanding*, A.C. No. 7919, October 8, 2014, 737 SCRA 530; *Agbulos v. Viray*, A.C. 7350, February 18, 2013, 690 SCRA 1; and *Isenhardt v. Real*, A.C. No. 8254, February 15, 2012, 666 SCRA 20.

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