

RE: ILLEGAL CAMPAIGN AND ACTIVITIES IN INTEGRATED BAR OF THE PHILIPPINES – CENTRAL LUZON ALLEGEDLY PERPETRATED BY ATTY. NILO DIVINA

A.M. No. 23-04-05-SC. July 30, 2024

Ponente: GAERLAN, J.

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GAERLAN, J.:

Antecedents

The instant case arose from an Anonymous Letter[1] dated March 24, 2023 (Anonymous Letter) filed against Atty. Nilo T. Divina (Atty. Divina) for alleged illegal campaigning activities relative to the election of the Integrated Bar of the Philippines (IBP)-Central Luzon Region.

According to the Anonymous Letter, it is allegedly an open secret that Atty. Divina wants to become IBP-Central Luzon Governor as a stepping stone to become the IBP National President. Atty. Divina has allegedly spent hundreds of thousands, if not millions of pesos, in prohibited campaign activities. In particular, the Anonymous Letter highlights the following instances wherein Atty. Divina allegedly foot the bill on behalf of the IBP-Central Luzon Officers:[2]

1.

During the Summer of 2022, Atty. Divina brought the IBP-Central Luzon Officers to the Balesin Island Club in Polilio, Quezon;

2.

On December 2022, Atty. Divina gave out cash and gift checks worth hundreds of thousands of pesos to IBP-Central Luzon Officers; and

3.

On February 2023, Atty. Divina brought the IBP-Central Luzon Officers to Bali, Indonesia[3]

The Anonymous Letter further enumerates the following IBP-Central Luzon Officers who were identified from several Facebook publications to be present in Bali, Indonesia, together with Atty. Divina, namely: "Winston Ginez," "Buko dela Cruz," "Peng dela Rama," and "Jade Molo." [4]

The Anonymous Letter likewise attached a copy of a Letter titled "My Story," allegedly written by Atty. Jocelyn Z. Martinez-Clemente (Atty. Clemente), wherein, among others, it detailed a meeting she had with Atty. Adenn Sigua (Atty. Sigua), Atty. Peter Paul S. Maglalang (Atty. Maglalang), Atty. Myla Matic,[5] and Atty. Divina, at

the latter's office in Makati. During the said meeting, Atty. Clemente was allegedly asked what position she would want if Atty. Divina became IBP-Central Luzon Governor. Thereafter, they were allegedly given Sodexo gift certificates in the amount of PHP 50,000.00.[6]

In Our Resolution[7] dated April 11, 2023, We directed the following individuals identified in the Anonymous Letter to file their respective Comments thereto: "(1) Atty. Nilo Divina; (2) Winston Ginez; (3) Peng dela Rama; (4) Buko dela Cruz; (5) Jade Molo; (6) Atty. Jo Clemente; and (7) Atty. Peter Paul S. Maglalang." [8] Moreover, this Court likewise directed the IBP National Officers and IBP-Central Luzon Officers to inform the Court of the identities of every person appearing in the photos attached to the Anonymous Letter.[9]

Submissions of the Parties

On April 27, 2023, Atty. Clemente filed her Compliance of even date, wherein she stood by her article "My Story"[10] and affirmed the contents thereof and attached a signed copy as proof of her affirmation.

At the outset, Atty. Clemente confirms having attended the Balesin Trip in 2022 but characterized the event as a regional team-building activity attended by the officers of IBP-Central Luzon and officers from several IBP Chapters. However, Atty. Clemente denies that the Balesin Trip was organized to build patronage for Atty. Divina.

Thereafter, Atty. Clemente provides a background behind the election of the Governor for IBP-Central Luzon. According to her, the election of the Governor is by tradition done via a "round robin" method, wherein each chapter has an opportunity to have their representative as Governor based on an order. The order for the chapters is allegedly as follows: Bataan, Pangasinan, Zambales, Tarlac, Nueva Ecija, Pampanga, and Bulacan. That for the years 2023-2025, it was IBP-Tarlac Chapter's turn to have a Governor for IBP-Central Luzon.[11]

According to Atty. Clemente, by tradition, officers of IBP-Tarlac Chapter rise by ascension, wherein the previous Secretary shall serve subsequently as Vice-President, and the previous Vice-President shall serve as President of the Chapter. Atty. Clemente was the Secretary of the said Chapter for 2019-2021 and was supposed to be the Vice-President for 2021-2023, until she was challenged by Atty. Warren Sarsagat (Atty. Sarsagat). Atty. Clemente, however, gave way to avoid any issues. Thus, it was Atty. Sarsagat, who was elected to the post of Vice-President for 2021-2023 and Atty. Sigua as its President for the same term. However, during the said elections, Atty. Sarsagat announced that he would not pursue the position of President and that it would be Atty. Clemente, following tradition. Thus, it was Atty. Clemente, who was next in line as President of the Chapter for 2023-2025.[12]

However, some of the past Presidents of the chapter, in particular Atty. Mariemier Rivera (Atty. Rivera) was vocal in their objection to elect Atty. Clemente to the post of President. Atty. Clemente surmised that this was because of the issues she had repeatedly raised regarding unliquidated amounts received by the Chapter from the National IBP for the former's allocations for legal aid from 2011 to 2019, which were during Atty. Rivera's terms.[13]

With respect to the post of Governor for the IBP-Central Luzon for the term 2021-2023, it was supposed to be the turn of IBP-Zambales Chapter. However, according to Atty. Clemente this was "grabbed" by IBP-Pampanga Chapter, which is why Atty. Maglalang sits as its incumbent Governor.[14]

Atty. Clemente then recalls that during the IBP-Central Luzon 2021 Christmas Party, Atty. Divina was introduced as a new member of the Tarlac Chapter. The said Christmas Party was allegedly sponsored by Atty. Divina and that Atty. Divina would be helping renovate the IBP-Tarlac Chapter office amounting to PHP 2 million. That the funds sent for the renovation of the office was not deposited in the official IBP-Tarlac account. Neither was there

any Board resolution passed accepting the donation and approving the renovation. Nevertheless, the renovation proceeded and was finished in August 2022.[15]

Atty. Clemente also recounts that the previous general counsel of IBP-Central Luzon had passed away, and the post was filled in by Atty. Divina.[16]

During this time also, Atty. Divina had been providing financial contributions to the Chapter without them being recorded in its official accounts.[17]

Atty. Clemente ends by narrating the events that have happened, starting from when IBP-Pampanga Chapter, Atty. Maglalang, who grabbed the reins as Governor of IBP-Central Luzon has allegedly been calculated to pave the way for Atty. Divina to eventually take the post once it was the IBP-Tarlac Chapter's turn for Governor.[18]

On May 17, 2023, Atty. Clemente filed a Supplemental Comment.[19] Atty. Clemente detailed that early on, Atty. Divina had allegedly been fishing other IBP Chapters to join so that he could use it as a means of getting a seat as IBP Governor and eventually Executive Vice-President (EVP). It was only the IBP-Tarlac Chapter that was receptive to the idea of welcoming Atty. Divina to its fold.[20]

As a final note, Atty. Clemente prayed that the IBP-Tarlac Chapter would be given the opportunity, as part of IBP-Central Luzon, to have its representative elected as Governor of the region.[21]

On April 28, 2023, Atty. Maglalang filed his Comment and Compliance[22] dated April 27, 2023. According to his Comment, Atty. Maglalang is the incumbent Governor of IBP-Central Luzon.[23] With respect to the alleged intentions of Atty. Divina to run for IBP-Central Luzon Governor, he remarks that there are indeed many individuals encouraging Atty. Divina to run for the position due to the latter's support to the region and its various chapters. Atty. Divina is a member of the Tarlac Chapter and a Legal Adviser as one of the IBP-Central Luzon Regional Officers. However, Atty. Maglalang states that Atty. Divina has intimated to him that he was hesitant to run for the position given his position as Dean of the University of Santo Tomas (UST) Faculty of Civil Law and as Managing Partner of Divina Law firm. Atty. Maglalang goes on to enumerate the contributions of Atty. Divina to IBP-Central Luzon and its chapters.[24]

With respect to the allegations that Atty. Divina engaged in illegal campaigning, Atty. Maglalang explains that the trip to Balesin Resort was a team-building activity for Chapter and Regional Officers of IBP-Central Luzon sponsored by Atty. Divina. On the other hand, Atty. Maglalang explains that the trip to Bali, Indonesia was organized for both the IBP-Central Luzon and UST Law Alumni Association officers as its Christmas Party and farewell party for the outgoing officers of IBP-Central Luzon.[25]

Anent the Sodexo Gift Certificates, Atty. Maglalang explains that it was given as an exchange gift for the barong, fruits, and IBP-Central Luzon wristwatch that Atty. Maglalang gave to Atty. Divina as Christmas gifts.[26]

Atty. Maglalang then argues that under Section 14 of the IBP By-laws,[27] there are certain acts and practices that are prohibited relative to IBP elections.[28] In particular, Atty. Maglalang maintains that the sponsored trips and support extended by Atty. Divina was not for the purpose of inducing or influencing any IBP members to vote for the latter.[29]

On April 24, 2023, Atty. Enrique V. Dela Cruz, Jr. (Atty. Dela Cruz), filed his Compliance with Comment[30] of even date. Atty. Dela Cruz denies the allegations in the Anonymous Letter that he is an officer of the IBP or any of its chapter, and that he is merely a member of the Bulacan Chapter.[31] Moreover, Atty. Dela Cruz clarifies that he was in Bali, Indonesia to attend an event of the UST Law Alumni Association, being an elected member of the Board of Trustees, and that it was a mere coincidence that they stayed in the same hotel, the "Anvaya Beach

Resort Bali," together with the officers of the IBP-Central Luzon.[32]

On April 27, 2023, Atty. Jose I. Dela Rama, Jr., (Atty. Dela Rama), filed his Comment on even date. In his Comment, Atty. Dela Rama recounts the history and culture of IBP – Central Luzon, explaining that sponsorships for their activities were not uncommon. Atty. Dela Rama details the various activities of IBP – Central Luzon which have been aided by the support of various sponsors.

On April 27, 2023, Atty. Michael Camilo G. Datario (Atty. Datario), filed his Compliance[33] dated April 25, 2023. In his Compliance, Atty. Datario states that he is the immediate past president of the IBP-Pangasinan Chapter.[34] Atty. Datario has furnished a copy of the Resolution of this Court to identify the individuals appearing in the photos attached to the Anonymous Letter. Atty. Datario then identifies the individuals appearing in the said photos.[35]

On April 28, 2023, Atty. Charina P. Ramos (Atty. Ramos), filed her Compliance[36] dated April 27, 2023. In the said Compliance, Atty. Ramos states that she is the President of the IBP-Bataan Chapter for the term 2021-2023 and that she is no longer an incumbent IBP-Central Luzon Officer. Atty. Ramos was furnished a copy of the Resolution of this Court to identify the individuals appearing in the photos attached to the Anonymous Letter. Atty. Ramos then identifies the individuals appearing in the said photos.[37]

On April 28, 2023, Atty. Winston M. Ginez (Atty. Ginez), filed his Comment[38] of even date. Atty. Ginez states that the IBP-Central Luzon consists of seven chapters: (1) IBP-Bataan Chapter; (2) IBP-Bulacan Chapter; (3) IBP-Nueva Ecija; (4) IBP-Pampanga Chapter; (5) IBP-Pangasinan Chapter; (6) IBP-Tarlac Chapter; and (7) IBP-Zambales Chapter.[39]

In February 2021, Atty. Ginez was elected as President of IBP-Zambales Chapter for the 2021-2023 term.[40] According to Atty. Ginez, the trip to Balesin Island Resort was a legitimate IBP-Central Luzon team-building activity. Meanwhile, the trip to Bali, Indonesia was a legitimate post-Christmas party celebration attended by IBP-Central Luzon officers. Atty. Ginez then identifies the individuals appearing in the photographs attached to the Anonymous Letter.[41]

On April 28, 2023, Atty. Jade Paulo Tranate Molo (Atty. Molo), filed his Comment[42] dated April 27, 2023. According to Atty. Molo, he is a member of the IBP-Bataan Chapter and is currently serving as its President for the term 2023-2025.[43] Also, according to him, the Balesin Resort trip was a regional team building for the officers of IBP-Central Luzon, which involved group activities and games.[44] On the other hand, the Bali, Indonesia trip was a post-Christmas party of the IBP-Central Luzon. Atty. Molo found nothing irregular or illegal in the fact that Atty. Divina sponsored the trips and activities of IBP-Central Luzon as these were normal occurrences and did not have any conditions attached to them. Moreover, Atty. Molo emphasized that during the said trips, he was not even an officer of IBP-Bataan Chapter. It was only after the February 25, 2023 election of the IBP-Bataan Chapter that Atty. Molo became its president.[45]

Atty. Molo likewise recalled that during the lunch at Atty. Divina's law office last December 8, 2022, he denied receiving any Sodexo gift cards. What was only given to them was for the IBP-Bataan Chapter Christmas party, and that it was given unconditionally without any thing expected in return.[46]

On April 28, 2023, Atty. Divina, filed his Comment[47] of even date. In his Comment, Atty. Divina denies engaging in illegal or prohibited campaigning and that the activities he sponsored for the IBP-Central Luzon were unconditional and borne out of goodwill. Atty. Divina emphasized that his generosity is only a way of giving back to the legal community.[48]

Atty. Divina does not deny sponsoring IBP activities, which are not only limited to Central Luzon but also other

Chapters from Manila, Makati, Quezon City, Cebu, Bicolandia, and Misamis Oriental. Atty. Divina has been actively participating and supporting the IBP as early as 2012 through various sponsorships and donations, such as Christmas parties, golf tournaments, regional conventions, and the like.[49]

According to Atty. Divina, due to his active participation as a member of IBP-Central Luzon, he was constantly encouraged to run for its Governor. However, despite the encouragement of his peers and his intention of helping IBP, he could not handle the demands of being an IBP Governor. Atty. Divina emphasized that this would take time away from his obligations as Dean of the UST Faculty of Civil Law, a law professor, and as the Managing Partner of his law firm.[50]

Atty. Divina addressed the Anonymous Letter that he could not have been engaged in illegal or prohibited campaign activities, considering that he was not a candidate for any position. Atty. Divina likewise points out that the individuals who attended the Bali and Balesin trips allegedly had no power to nominate and vote for IBP-Central Luzon Governor.[51]

Suspension of the May 5, 2023 Election for IBP-Central Luzon Governor

In compliance with this Court's Resolution dated April 25, 2023, the election of officers for IBP-Central Luzon scheduled on May 5, 2023 was held in the abeyance. Meanwhile the election for Governor for the other regions proceeded as scheduled.[52]

Pending resolution of the present controversy, and so as not to disenfranchise IBP-Central Luzon of representation at the 26[th] Board of Governors (BOG), this Court appointed, Atty. Maria Imelda Quiambao-Tuazon as the Officer-in-Charge of IBP-Central Luzon to temporarily discharge the functions of Governor and to represent the Central Luzon Region at the 26[th] BOG, until such time that a special election is conducted for the Region.[53]

DISCUSSION

The IBP as a Public Institution

The IBP is a public institution with its officers performing public functions. Thus, its officers – whether in the National, Regional, or Local Chapters should be held to a higher degree of standard and should, as much as possible avoid involvement in activities that may erode the integrity and independence of the IBP as a public institution, and to ensure and maintain the appearance of impartiality in the performance of its functions.

The integration of the Bar is a process by which every member of the Bar is afforded an opportunity to do his or her share in carrying out the objectives of the Bar as well as obliged to bear his or her portion of its responsibilities.[54] Relatedly, the term "Bar" refers to the collectivity of all persons whose names appear in the Roll of Attorneys.[55] The "Integrated Bar" is organized by or under the direction of the State and is an official national body of which all lawyers are required to be members.[56]

Thus, when Congress enacted Republic Act No. 6397,[57] authorizing the Supreme Court to adopt rules to effect the integration of the Philippine Bar, it was in the exercise of the paramount police power of the State to "raise the standards of the legal profession, improve the administration of justice, and enable the Bar to discharge its public responsibility more effectively." [58] Furthermore, the integration of the Philippine Bar and its constitution into a body corporate through Presidential Decree No. 181[59] were dictated by fundamental considerations of public welfare and motivated by a desire to meet the demands of pressing public necessity.[60]

The foregoing authority and imprimatur to integrate the Philippine Bar finds its legal moorings as early as the 1935 Constitution, in particular Article VIII, Section 13 thereof, which granted the Supreme Court the power to promulgate rules concerning the admission to the practice of law.[61]

In *Tabuzo v. Gomos*,^[62] the Court had occasion to trace the statutory genealogy of the IBP as an institution. We quote the discussion of Chief Justice Alexander G. Gesmundo, to wit:

The IBP's existence traces its roots to Section 13, Article VIII of the 1935 Constitution which stated that:

Section 13. The Supreme Court shall have the power to promulgate rules concerning pleading, practice, and procedure in all courts, and the admission to the practice of law. Said rules shall be uniform for all courts of the same grade and shall not diminish, increase, or modify substantive rights. The existing laws on pleading, practice, and procedure are hereby repealed as statutes, and are declared Rules of Courts, subject to the power of the Supreme Court to alter and modify the same. The Congress shall have the power to repeal, alter or supplement the rules concerning pleading, practice, and procedure, and the admission to the practice of law in the Philippines.

In view of this provision, Congress enacted R.A. No. 6397 which gave this Court the facility to initiate the integration process of the Philippine Bar; the provisions of which read:

Section 1. Within two years from the approval of this Act, the Supreme Court may adopt rules of court to effect the integration of the Philippine Bar under such conditions as it shall see fit in order to raise the standards of the legal profession, improve the administration of justice, and enable the bar to discharge its public responsibility more effectively.

Section 2. The sum of five hundred thousand pesos is hereby appropriated, out of any funds in the National Treasury not otherwise appropriated, to carry out the purposes of this Act. Thereafter, such sums as may be necessary for the same purpose shall be included in the annual appropriations for the Supreme Court.

Section 3. This Act shall take effect upon its approval.

Meanwhile, the 1973 Constitution was ratified wherein Section 5 (5) of Art. X enumerated the powers of this Court, thus:

Promulgate rules concerning pleading, practice, and procedure in all courts, the admission to the practice of law, and the integration of the bar, which, however, may be repealed, altered or supplemented by the Batasang Pambansa. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights.

Finally, the legal quandary pertaining to the integration of the Philippine Bar culminated in the promulgation of In the Matter of the Integration of the Bar of the Philippines where the Court upheld the integration of the Philippine Bar on the ground that it was sanctioned by Section 13, Art. VIII of the 1935 Constitution.

Following this judicial pronouncement, Presidential Decree (P.D.) No. 181 was enacted formally creating the IBP and vesting it with corporate personality. Section 2 of the law states:

Section 2. The Integrated Bar shall have perpetual succession and shall have all legal powers appertaining to a juridical person, particularly the power to sue and be sued; to contract and be contracted with; to hold real and personal property as may be necessary for corporate purposes; to mortgage, lease, sell, transfer, convey and otherwise dispose of the same; to solicit and receive public and private donations and contributions; to accept and receive real and personal property by gift, devise or bequest; to levy and collect membership dues and special assessments from its members; to adopt a seal and to alter the same at pleasure; to have offices and conduct its affairs in the Greater Manila Area and elsewhere; to make and adopt by-laws, rules and regulations not inconsistent with the laws of the Philippines or the Rules of Court, particularly Rule 139-A thereof; and generally to do all such acts and things as may be necessary or proper to carry into effect and promote the purposes for which it was organized.

Significantly, Section 6 of P.D. No. 1811 still recognized this Court's constitutional power to promulgate rules

concerning the IBP, and such power of the Court was also institutionalized and carried into the present Constitution in which Sec. 5 (5), Art. VIII now reads:

Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, admission to the practice of law, the integrated bar, and legal assistance to the under-privileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.[63] (Emphasis and citations omitted)

Accordingly, the Court in *Tabuzo*, after having sifted through the foregoing statutory and jurisprudential background, characterized the IBP as "a sui generis public institution deliberately organized, by both the legislative and judicial branches of government and recognized by the present and past Constitutions, for the advancement of the legal profession." [64]

As a public institution, the IBP's general objectives and purposes, as embodied in its Revised By-Laws as approved by the Court in *Bar Matter No. 4261*, [65] includes:

- (a) to elevate the standards of the legal profession; foster and maintain, on the part of its members, high ideals of integrity, learning, professional competence, and public service and conduct; safeguard the professional interests of its members; and cultivate among its members a spirit of cordiality and camaraderie;
- (b) to assist and improve the administration of justice; encourage and foster a continuing legal education program; promote a continuing program of legal research in substantive and adjective law; and make reports and recommendations thereon; and
- (c) to enable the Bar to discharge its public responsibilities more effectively; provide a forum for the discussion of law, jurisprudence, law reform, pleading, practice and procedure, and the relations of the Bar with the Bench and to the public, and publish information relation thereto.

In addition, the IBP through the Commission on Bar Discipline may be delegated by this Court to assist in the conduct of fact-finding investigations and make recommendations on complaints for disbarment, suspension, and discipline of lawyers. [66] This power is a manifestation of the Court's Constitutional mandate to discipline lawyers [67] and to regulate, supervise, and control the practice of law in the Philippines. [68]

More recently, the Court recognized the invaluable participation of the IBP in ensuring a lawyer's accountability to society, the courts, the legal profession, and the client. [69]

Under Canon VI of the Code of Professional Responsibility and Accountability (CPRA), disciplinary proceedings against lawyers may be commenced by the Supreme Court on its own initiative, or upon the filing of a verified complaint by the board of Governors of the IBP, or by any person, before the Supreme Court or the IBP. [70] In addition, the Supreme Court may refer an administrative case filed before it to the IBP for investigation, report and recommendation. [71] In the exercise of its investigatory authority, the IBP acting through the appointed Investigator has the power to issue subpoenae and administer oaths. [72] Moreover, the IBP through its BOG, upon the recommendation of the assigned Investigator, may cite a party for indirect contempt for willful failure or refusal to obey a subpoena or any other lawful order issued by the Investigator. [73] In addition, the IBP through its BOG may recommend to this Court the preventive suspension of a lawyer from the practice of law during the pendency of the investigation. [74]

Aside from the foregoing function, an IBP representative is likewise appointed to the Judicial and Bar Council to participate in the selection of nominees for appointment to vacant positions in the judiciary. [75]

Clearly, the functions and authority exercised by the IBP extend beyond fostering camaraderie amongst the members of the Bar. The IBP as a public institution plays a crucial role to elevate the standards of the legal profession, to assist and improve the administration of justice, to enable the Bar to discharge its public responsibilities more effectively, among others. Accordingly, the IBP Officers who perform their mandate to serve the members of the Bar owe it to them to preserve and maintain the IBP's integrity and independence.

Power of the Supreme Court to regulate the activities of the IBP, in particular the conduct of its elections

Implicit in the wording of Article VIII, Section 5 of the 1987 Constitution is the Supreme Court's power to supervise all the activities of the IBP, including the election of its officers.[76] Likewise, the Revised By-Laws of the IBP recognizes the authority of the Supreme Court to supervise and regulate its affairs. In particular, the Revised By-Laws of the IBP allows the Court: (a) to designate an official observer at any election of the IBP;[77] (b) to amend, modify, or repeal the IBP's By-Laws;[78] and (c) to approve the removal of a member of the BOG.[79]

Notably, this is not the first time that the Court has been compelled to exercise its power and authority to regulate the activities of the IBP, in particular the conduct and outcome of the election of its officers. The election of officers of the IBP be it in the National, Regional, or Local Chapter level has not been spared of controversy.

In *Garcia v. De Vera*,[80] the Court issued a Temporary Restraining Order enjoining the conduct of the election for the IBP Regional Governor in Eastern Mindanao after a petition was filed seeking to disqualify one of the candidates, Atty. Leonard De Vera. According to the petition, Atty. Leonard De Vera had purposefully transferred his IBP membership from Pasay, Parañaque, Las Piñas, and Muntinlupa Chapter to Agusan del Sur Chapter, in brazen abuse of the rotation rule allegedly with the ultimate goal of seizing the IBP Presidency. In addition, petitioners likewise claim that Atty. Leonard De Vera is disqualified because he is not morally fit to occupy the position of governor of Eastern Mindanao.

In *Re Inquiry into the 1989 Elections of the integrated Bar of the Philippines*,[81] the Court acting on widespread reports of intensive electioneering and overspending by the candidates, formed a committee to conduct a formal inquiry to determine the veracity of the reports and to determine whether prohibited acts and activities under the IBP By-Laws were committed before and during the 1989 IBP National elections. After the formal investigation, the Court found that candidates for the national positions in the IBP elections committed prohibited acts and practices relative to elections and violated the idea of a "strictly non-political" Integrated Bar. Accordingly, the Court annulled the elections for the IBP National Officers held on June 3, 1989 and repealed several provisions of the IBP By-Laws, which allowed for extravagant electioneering and restored the system of having the IBP President and EVP elected by the Board of Governors.

In *Re: Brewing Controversies in the Elections in the Integrated Bar of the Philippines*,[82] the Court formed a Special Investigating Committee to look into the leadership controversy at the IBP, specifically the elections of Vice- President for the Greater Manila Region, EVP of the IBP and the election of Governors for Western Mindanao and Western Visayas. During the pendency of the administrative case against Atty. Rogelio A. Vinluan (Atty. Vinluan), he was not allowed to assume his position as President of the IBP for 2009-2011, and instead the Court designated retired Supreme Court Associate Justice Santiago Kapunan as the Officer-in-Charge of the IBP. The Court would eventually find Atty. Vinluan and his compatriots guilty of grave professional misconduct and were disqualified to run as national officers of the IBP in any subsequent election.

Accordingly, We have repeatedly stepped into and assumed supervision of the conduct and activities of the IBP. Nevertheless, while the Court has been granted an extensive power of supervision over the IBP, it is axiomatic that such power should be exercised prudently.[83]

Atty. Divina did not violate Section 14 of the Revised IBP By-Laws

In Re: 1989 Elections of the IBP, the Court pronounced that the unethical practices of lawyers during IBP elections cannot but result in the stature of the IBP as an association of the practitioners of a noble and honored profession being diminished.

Section 14 of the Revised IBP By-Laws enumerates several prohibited acts and practices relative to the elections of officers:

Section 14. Prohibited acts and practices relative to elections. – The following acts and practices relative to the elections of officers are prohibited, whether committed by a candidate for any elective office in the Integrated Bar or by any other member, directly or indirectly, in any form or manner, by themselves or through another person:

(1) Distribution, except within seven (7) days from election day, or election campaign materials in support of a candidate;

(2) Campaigning for or against any candidate, while holding an elective, judicial, quasi-judicial, or prosecutory position or office in the government or any political subdivision, agency or instrumentality thereof;

(3) Formation of tickets, single slates, or combinations of candidates as well as the advertising thereof, except within seven (7) days from election day;

(4) For the purpose of inducing or influencing a member to withhold his or her vote, or to vote for or against a candidate: (a) payment of the dues to the Integrated Bar or other indebtedness of any member to any third party; (b) giving of food, drink, entertainment, transportation, or any article of value, or similar consideration to any person; or (c) making a promise or causing an expenditure to be made, offered, or promised to any person.

In the present controversy, Atty. Divina is charged with having committed "patently illegal, prohibited, and corrupt campaign activities" relative to Atty. Divina's alleged intention to run as IBP-Central Luzon Governor during the scheduled May 5, 2023 elections.

While the act of Atty. Divina in sponsoring the trip to the Balesin Island Club in Polilio, Quezon and Bali, Indonesia of the IBP-Central Luzon Officers might appear extravagant and excessive, We do not find the same to have been committed relative to any elections in the IBP.

First, there is no concrete evidence that, indeed, Atty. Divina has or had any intention of running for Governor of IBP-Central Luzon.

The Anonymous Letter in fact explicitly states that Atty. Divina's intentions to be the IBP-Central Luzon Governor is "an open secret." However, without any corroborating evidence, such statement remains to be hearsay.

We likewise find nothing in Atty. Clemente's article which shows that Atty. Divina himself intimated his intention to run for IBP-Central Luzon Governor. If anything, Atty. Clemente recounts that it was Atty. Maglalang who asked her what position she wanted if Atty. Divina becomes Governor. We likewise cannot rely on Atty. Clemente's statements in her Compliance dated April 27, 2023 to support the allegation that Atty. Divina indeed had any intentions to run as Governor for [BP-Central Luzon.

We quote the statement of Atty. Clemente:

15. By and large and in hindsight, the dynamics within IBP CL in the last couple of years or even more, leads one to think that every step taken is geared toward the election of Dean Divina as Governor. His choice of

membership to Tarlac is a clear indication as it will be Tarlac's turn for Governor this term. That Gov. Paul "grabbed" the governorship supports a theory that they are paving the way of Divina's entry in the region.

From Atty. Clemente's narration, they appear to be merely conjectures and surmises revolving around a supposed plot within the IBP-Central Luzon Region to allow Atty. Divina to seize the Governor position.

This Court cannot sustain its ruling merely on inferences and unconfirmed theories alone.

Second, the acts adverted to in the Anonymous Letter committed by Atty. Divina was done during the Summer of 2022, December of 2022 and last February 2023, months prior to the scheduled May 5, 2023 IBP-Central Luzon elections. During this time, the members of the House of Delegates – who may nominate and elect the Governor for each Region, have yet to be elected by the local chapters.

Under Section 39 of the Revised IBP By-Laws, the Delegates from each Region shall elect the Governor for their Region. Relatedly, Section 31 states that the membership of the House of Delegates shall consist of all the Chapter Presidents, and in the case of Chapters entitled to more than one Delegate each, the Vice-Presidents of the Chapters and such additional Delegates as the Chapters are entitled to.

Hence with respect to the members of the House of Delegates who may nominate and elect Atty. Divina as Governor for the term 2023-2025, they have yet to be elected during the time that Atty. Divina performed the acts complained of.

Third, the Court finds it tenuous to draw parallelisms with the 1989 IBP National Elections and the present controversy.

In Re: 1989 Elections of the IBP, the candidates for IBP President had announced their candidacies when they perpetrated the prohibited activities. On the other hand, there is no indication that Atty. Divina has or had intention to run for Governor of IBP-Central Luzon when he sponsored the trips of the Regional officers. In fact, the lack of intention to run for the said position was re-affirmed in his Compliance filed before the Court.

Moreover, in Re: 1989 Elections of the IBP, the acts committed by the candidates were found to clearly influence the members of the House of Delegates relative to the election of IBP President. In the present case, according to the participants of the trips sponsored by Atty. Divina, they were team-building activities designed to strengthen the IBP-Central Luzon office.

This was even echoed by Atty. Clemente, that the trip to Balesin Island Club was a "regional team-building activity" and that "to say now that such trip was meant to build patronage for Dean Divina is to undermine the team-building purpose of the activity."

Given the foregoing, We find that the acts complained of against Atty. Divina in sponsoring the trips of the IBP-Central Luzon officers do not amount to a violation of Section 14 of the Revised IBP By-Laws.

Nevertheless, We find Atty. Divina Guilty of Simple Misconduct in Violation of Canon II, Sections 1 and 2 of the CPRA

Although We find that Atty. Divina did not commit any prohibited acts and practices relative to elections in the IBP, We nevertheless find him guilty of violating Canon II, Sections 1 and 2 of the CPRA.

The relevant provisions read:

CANON II PROPRIETY

A lawyer shall, at all times, act with propriety and maintain the appearance of propriety in personal and professional dealings, observe honesty, respect and courtesy, and uphold the dignity of the profession consistent with the high standards of ethical behavior.

SECTION 1. Proper conduct. – A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

SECTION 2. Dignified conduct. – A lawyer shall respect the law, the courts, tribunals, and other government agencies, their officials, employees, and processes, and act with courtesy, civility, fairness, and candor towards fellow members of the bar.

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

As an officer of the Court, a lawyer shall uphold the Constitution, obey the laws of the land, and promote respect for law and legal processes.[84] As instruments for the administration of justice and vanguards of our legal system, lawyers are expected to maintain not only legal proficiency, but also a high standard of morality, honesty, integrity and fair dealing so that people's faith and confidence in the judicial system is ensured.[85]

Much is expected of lawyers in that it does not suffice that they are persons of integrity and values but must also appear to be so in the eyes of the people.[86]

As introduced by the CPRA, "[a] lawyer shall, at all times, act with propriety and maintain the appearance of propriety in personal and professional dealings, observe honesty, respect and courtesy, and uphold the dignity of the profession consistent with the high standards of ethical behavior."

Amongst the offenses punished by the CPRA is misconduct. Misconduct is defined as a transgression of some established and definite rule of action.[87] More, particularly, "Simple Misconduct," is defined as misconduct without the manifest elements of corruption, clear intent to violate the law or flagrant disregard of established rules.[88]

The Court is now faced with the difficult task of calibrating the guidelines to determine what constitutes misconduct in light of the peculiar facts of the case. Where does the Court draw the line between reasonable and acceptable generosity and excessive largesse? When is altruism a mere expression of gratitude and when does it teeter dangerously close to influence peddling?

As aptly pointed out by Senior Associate Justice Marvic M.V.F. Leonen, our laws regulating the conduct of public officers provide for the general rule that public officers and employees are prohibited from receiving gifts.[89]

Section 3 of Republic Act No. 3019 penalizes public officers for accepting or receiving of any gift, present, share, percentage or benefit:

Section 3. Corrupt practices of public officers. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

. . . .

(b) Directly or indirectly requesting or receiving any gift, present, share, percentage, or benefit, for himself or for any other person, in connection with any contract or transaction between the Government and any other party, wherein the public officer in his official capacity has to intervene under the law.

(c) Directly or indirectly requesting or receiving any gift, present or other pecuniary or material benefit, for

himself or for another, from any person for whom the public officer, in any manner or capacity, has secured or obtained, or will secure or obtain, any Government permit or license, in consideration for the help given or to be given, without prejudice to Section thirteen of this Act.

(d) Accepting or having any member of his family accept employment in a private enterprise which has pending official business with him during the tendency thereof or within one year after its termination.

Under Republic Act No. 3019, "[r]eceiving any gift" includes the act of accepting directly or indirectly a gift from a person other than a member of the public officer's immediate family, on behalf of himself or of any member of his family or relative within the fourth civil degree, either by consanguinity or affinity, even on the occasion of a family celebration or national festivity like Christmas, if the value of the gift is under the circumstances manifestly excessive.

Meanwhile, Republic Act No. 6713, otherwise known as Code of Conduct and Ethical Standards for Public Officials and Employees defines a "gift" as a thing or a right to dispose of gratuitously, or any act or liberality, in favor of another who accepts it, and shall include a simulated sale or an ostensibly onerous disposition thereof. Likewise, "Receiving any gift" includes the act of accepting directly or indirectly, a gift from a person other than a member of his family or relative as defined in this Act.

The foregoing rule indeed admits of certain exceptions, if the gift involved is unsolicited, of nominal or insignificant value, and it is not given in anticipation of or in exchange for, a favor from the recipient.

The prohibition against soliciting and accepting gifts extends even if the same was not in exchange for the performance of an act or favor. The policy behind it is to avoid a situation wherein the recipient may feel compelled to return the favor or that he owes a debt of gratitude or "utang na loob" to the giver. In *In re: Query of Executive Judge Estrella Estrada*[90] this Court characterized "utang na loob" as gratitude which renders a man beholden to another, a sense of obligation which is valued as highly as pride and honor.

Notably, however, in *Tabuzo*, this Court clarified that officers of the IBP, although they perform public functions, are not considered public officers in the context of Section 3(b)[91] of Republic Act No. 6713, Article 203 the Revised Penal Code,[92] Section 4(e)[93] Republic Act No. 9485,[94] or even Section 2(b) of Republic Act No. 3019.

This does not mean, however, that IBP Officers have an unbridled freedom to solicit, accept, or receive gifts. The Court may discipline lawyers for the act of giving and receiving gifts if the context and situation in which it is made constitutes improper conduct. The Court's ruling in *Tabuzo* simply means that IBP Officers are not public officers for purposes of prosecution under the relevant laws. Nevertheless, the Court may draw parallelism from these laws in viewing what constitutes improper conduct for purposes of imposing administrative liability.

To repeat, the IBP as a public institution performs functions which involve not only fostering the standards of legal profession but the administration of justice. In addition, the IBP exercises authority delegated by this Court in disciplinary proceedings of the members of the legal profession. Thus, its officers—whether in the National, Regional, or Local Chapters should be held to a higher degree of standard and should, as much as possible, avoid involvement in activities that may erode the integrity and independence of the IBP as a public institution, and to ensure and maintain the appearance of impartiality in the performance of its functions.

Thus, if an individual is willing to contribute, donate, or volunteer to further the efforts of the IBP, it must be tempered by the nature and purpose of the activity. The support should be in furtherance of the goals and objectives of the IBP and for the direct benefit of its members and should not solely be for the interest, use, and enjoyment of its officers.

In the present case, Atty. Divina does not deny that he sponsored the trips of the IBP-Central Luzon Officers to Bales in Island Club and Bali, Indonesia. These "gifts" are undoubtedly not of insignificant or nominal value. Atty. Divina characterizes these as acts of generosity to support the IBP and its role in the legal profession. Atty. Divina may claim that these do not come with strings attached, but this "gift" necessarily creates a sense of obligation on the recipient to repay his gratitude in the future.

Notably however, these activities sponsored by Atty. Divina were primarily and solely for the benefit of the officers of IBP-Central Luzon. It does not support a particular activity of the IBP for the benefit of its constituent members, nor does it further a purpose or objective of the IBP.

Although Atty. Divina claims his intentions in supporting the IBP and its activities are out of generosity; the sponsorship of the trips of the IBP-Central Luzon Officers to Balesin Island Club and to Bali, Indonesia crossed the borders on excessive and overstepped the line of propriety.

This Court cannot countenance his actions as it casts serious doubts as to the IBP's integrity, impartiality, and independence. In his dealings with the IBP, the Court deems Atty. Divina's conduct fell below the exacting standards of conduct expected of a member of the legal profession. Thus, the Court finds Atty. Divina guilty of Simple Misconduct in violation of Canon II, Sections 1 and 2 of the CPRA.

As to the appropriate penalty, Canon VI, Section 34 of the CPRA characterizes Simple Misconduct as a less serious offense with the imposable penalty of: (a) suspension from the practice of law for a period within the range of one month to six months or revocation of notarial commission and disqualification as notary public for less than two years; (b) or a fine within the range of PHP 35,000.00 to PHP 100,000.00. Considering the serious nature of Atty. Divina's violation, the Court finds it appropriate to impose the fine of PHP 100,000.00.

With respect to the IBP Officers who received the gifts while occupying their position: (1) Atty. Maglalang, as Governor of IBP-Central Luzon (2021-2023); (2) Atty. Ginez as President of IBP-Zambales Chapter (2021-2023); (3) Atty. Clemente as Auditor of IBP-Tarlac Chapter (2021-2023), the Court likewise finds them guilty of simple misconduct and impose upon each of them a fine of PHP 100,000.00. Their cavalier acceptance of the "gifts" extended to them while being officers of the IBP cast serious doubt on their independence, integrity, and impartiality as well as that of the IBP, as an institution.

Finally, with respect to Attys. Molo, Dela Cruz, Jr., and Dela Rama, the Court likewise finds them guilty of simple misconduct and impose upon each of them a fine of PHP 100,000.00. The Court observes that the receipt of these gifts – which are nothing short of exorbitant reflects on their ability to act with propriety and maintain the appearance of propriety in personal and professional dealings. Prudence dictates that such ostentatious gifts would make them beholden to the giver and this feeling of owed gratitude may cloud their judgment in the future.

The Court recognizes the invaluable and immeasurable contribution that the IBP lends to the Philippine legal community. It is for this reason that the Court is constrained to intervene to preserve and maintain the IBP's integrity, impartiality, and independence as an institution. The instant case serves not to dissuade the members of the IBP but to encourage them to take active participation in its activities tempered with propriety and dignified conduct.

ACCORDINGLY, the Court finds Atty. Nilo T. Divina GUILTY of Simple Misconduct in violation of Canon II, Section 1 and Section 2 of the Code of Professional Responsibility and Accountability and is hereby FINED PHP 100,000.00 with a STERN WARNING that a repetition of the same or similar offense will be dealt with more severely.

The Court likewise finds Attys. Peter Paul S. Maglalang, Winston M. Ginez, Jocelyn "Jo" M. Clemente, Jade

Paulo T. Molo, Enrique V. Dela Cruz, Jr., and Jose I. Dela Rama, Jr., GUILTY of simple misconduct in violation of Canon II, Section 1 and Section 2 of the Code of Professional Responsibility and Accountability and are hereby FINED PHP 100,000.00 each with a STERN WARNING that a repetition of the same or similar offense will be dealt with more severely.

The Court's Resolution dated April 25, 2023 holding in abeyance the election of officers for the Integrated Bar of the Philippines – Central Luzon is hereby lifted. Accordingly, the Integrated Bar of the Philippines – Central Luzon is hereby ORDERED to proceed with the election of its Governor for the 2023-2025 term.

SO ORDERED.

Gesmundo, C.J., Caguioa, Inting, Zalameda, M. Lopez, Dimaampao, Marquez, Kho, Jr., and Singh, JJ., concur.

Leonen, SAJ., concur. See separate opinion.

Hernando, J., see dissenting opinion.

Lazaro-Javier, J., see dissent.

Rosario, J., joined the dissent of Justice Javier.

J. Lopez, J., joined the dissenting opinion of J. Hernando.

[1] Rollo, pp. 1–2.

[2] Id. at 1.

[3] Id.

[4] Id.

[5] Id. at 292–C.

[6] Id. at 1–2.

[7] Id. at 54–58.

[8] Id. at 54 & 56.

[9] Id.

[10] Id. at 3–8.

[11] Id. at 292.

[12] Id. at 293.

[13] Id. at 294–295.

[14] Id. at 293.

[15] Id. at 293–294.

[16] Id. at 293.

[17] Id. at 293–294.

[18] Id. at 294.

[19] Id. at 389.

[20] Id. at 391–392.

[21] Id. at 394.

[22] Id. at 59–138.

[23] Id. at 59.

[24] Id. at 60–62.

[25] Id. at 62.

[26] Id. at 66–67.

[27] Section 14. Prohibited acts and practices relative to elections. — The following acts and practices relative to elections are prohibited, whether committed by a candidate for any elective office in the Integrated Bar or by any other member, directly or indirectly, in any form or manner, by himself or through another person.

- (1) Distribution, except on election day, of election campaign materials;
- (2) Distribution, on election day, of election campaign materials other than a statement of the biodata of the candidate on not more than one page of a legal size sheer of paper; or causing the distribution of such statement to be done by persons other than those authorized by the officer presiding at the elections;
- (3) Campaigning for or against any candidate, while holding an elective, judicial, quasi-judicial or prosecutory office in the Government or any political subdivision, agency or instrumentality thereof;
- (4) Formation of tickets, single slates, or combinations or candidates as well as the advertising thereof;
- (5) For the purpose of inducing or influencing a member to withhold his vote, or to vote for or against a candidate,
 - (1) payment of the dues or other indebtedness of any member;
 - (2) giving of food, drink, entertainment, transportation or any article of value, or any similar consideration to any person; or
 - (3) making a promise or causing an expenditure to be made, offered or promise to any person.

[28] Rollo, p. 85.

[29] Id. at 86.

[30] Id. at 213–217.

[31] Id. at 213.

[32] Id. at 213–214.

[33] Id. at 232–233.

[34] Id. at 232.

[35] Id. at 234–240.

[36] Id. at 241–243.

[37] Id. at 241–242.

[38] Id. at 317–320.

[39] Id. at 317.

[40] Id.

[41] Id. at 317–322.

[42] Id. at 279–285.

[43] Id. at 279.

[44] Id. at 280–281.

[45] Id. at 282–283.

[46] Id. at 284.

[47] Id. at 244–266.

[48] Id. at 245 and 247.

[49] Id. at 248.

[50] Id. at 254–255.

[51] Id. at 255–257.

[52] Attached Supreme Court Notice dated June 27, 2023, p. 1.

[53] Id. at 1–2.

[54] In the Matter of the IBP Membership Dues Delinquency of Atty. Marcial A. Edillon, 174 Phil. 55, 61 (1978) [Per C.J. Castro, En Banc].

[55] In the Matter of the Integration of the Bar of the Philippines, 151 Phil. 132, 135 (1973) [Per Curiam, En Banc]. See also Garcia v. De Vera, 463 Phil. 385 (2003) [Per J. Tinga, En Banc].

[56] In the Matter of the IBP Membership Dues Delinquency of Atty. Marcial A. Edillon, 174 Phil. 55, 61 (1973) [Per C.J. Castro, En Banc].

[57] AN ACT PROVIDING FOR THE INTEGRATION OF THE PHILIPPINE BAR, AND APPROPRIATING FUNDS THEREFOR, Approved on September 17, 1971.

[58] In the Matter of the IBP Membership Dues Delinquency of Atty. Marcial A. Edillon, 174 Phil. 55, 63 (1973) [Per C.J. Castro, En Banc].

[59] CONSTITUTING THE INTEGRATED BAR OF THE PHILIPPINES INTO A BODY CORPORATE AND PROVIDING GOVERNMENT ASSISTANCE THERETO FOR THE ACCOMPLISHMENT OF ITS PURPOSES, approved on May 4, 1973.

[60] In the Matter of the IBP Membership Dues Delinquency of Atty. Marcial A. Edillon, 174 Phil. 55, 63 (1978) [Per C.J. Castro, En Banc].

[61] Section 13. The Supreme Court shall have the power to promulgate rules concerning pleading, practice, and procedure in all courts, and the admission to the practice of law. Said rules shall be uniform for all courts of the same grade and shall not diminish, increase, or modify substantive rights. The existing laws on pleading, practice, and procedure are hereby repealed as statutes, and are declared Rules of Courts, subject to the power of the Supreme Court to alter and modify the same. The Congress shall have the power to repeal, alter or supplement the rule concerning pleading, practice, and procedure, and the admission to the practice of law in the Philippines.

[62] 836 Phil. 297 (2018) [Per J. Gesmundo, Third Division].

[63] Id. at 308–310.

[64] Id. at 298. (Emphasis supplied)

[65] In Re: The Proposed Integrated Bar of the Philippines Revised By-Laws, March 8, 2023.

[66] Melad-Ong v. Sabban, A.C. No. 10511, January 4, 2022 [Per Curiam, En Banc]; Ramirez v. Buhayang-Margallo, 752 Phil. 473, 484 (2015) [Per J. Leonen, En Banc]; Tan v. IBP Commission on Bar Discipline, 532 Phil. 605, 611–612 (2006) [Per J. Tinga, Third Division].

[67] CONST., art. VIII, sec. 11. See also Ramirez v. Buhayang-Margallo, id.

[68] Frias v. Bautista-Lozada, 523 Phil. 17, 20 (2006) [Per J. Corona, En Banc].

[69] CODE OF PROFESSIONAL RESPONSIBILITY AND ACCOUNTABILITY, Canon VI, A.M. No. 22-09-01-SC, April 11, 2023.

[70] CODE OF PROFESSIONAL RESPONSIBILITY AND ACCOUNTABILITY, Canon VI, sec. 2.

[71] CODE OF PROFESSIONAL RESPONSIBILITY AND ACCOUNTABILITY, Canon VI, sec. 2.

[72] CODE OF PROFESSIONAL RESPONSIBILITY AND ACCOUNTABILITY, Canon VI, sec. 18.

[73] CODE OF PROFESSIONAL RESPONSIBILITY AND ACCOUNTABILITY, Canon VI, sec. 19.

[74] CODE OF PROFESSIONAL RESPONSIBILITY AND ACCOUNTABILITY, Canon VI, sec. 31.

[75] In re Inquiry into the 1989 Elections of the Integrated Bar of the Philippines, 258-A Phil. 173, 197 (1989) [Per Curiam, En Banc].

[76] 463 Phil. 385 (2003) [Per J. Tinga, En Banc].

[77] THE REVISED BY-LAWS OF THE INTEGRATED BAR OF THE PHILIPPINES, sec. 15.

[78] THE REVISED BY-LAWS OF THE INTEGRATED BAR OF THE PHILIPPINES, sec. 80.

[79] THE REVISED BY-LAWS OF THE INTEGRATED BAR OF THE PHILIPPINES, sec. 44.

[80] Garcia v. De Vera, 463 Phil. 385, 401–402 (2003) [Per J. Tinga, En Banc].

[81] 258–A Phil. 173 (1989) [Per Curiam, En Banc].

[82] 652 Phil. 398 (2010) [Per C.J. Corona, En Banc].

[83] Velez v. De Vera, 528 Phil. 763, 806 (2006) [Per Curiam, En Banc].

[84] Lim v. Atty. Bautista, A.C. No. 13468, February 21, 2023 [Per Curiam, En Banc]. See also Asuncion v. Atty. Salvado, A.C. No. 13242, July 5, 2022 [Per Curiam, En Banc].

[85] A-1 Financial Services, Inc. v. Valerio, 636 Phil. 627, 631 (2010) [Per J. Peralta, En Banc].

[86] Re: Anonymous Complaint against Untian, 851 Phil. 352, 365 (2019) [Per J. Reyes, Jr., En Banc].

[87] Domingo v. Civil Service Commission, 874 Phil. 587, 602 (2020) [Per J. Lazaro-Javier, First Division]; Imperial, Jr. v. Government Service Insurance System, 674 Phil. 286, 298 (2011) [Per J. Brion, En Banc]; Civil Service Commission v. Ledesma, 508 Phil. 569, 579–580 (2005) [Per J. Carpio, En Banc].

[88] CODE OF PROFESSIONAL RESPONSIBILITY AND ACCOUNTABILITY, Canon VI, sec. 34.

[89] Section 7(d) of Republic Act No. 6713, states:

Section 7. Prohibited Acts and Transactions. — In addition to acts and omissions of public official and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:

....

(d) Solicitation or acceptance of gifts. — Public officials and employees shall not solicit or accept directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value from any person in the course of their official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of their office.

[90] 239 Phil. 1 (1987) [Per J. Gutierrez, En Banc].

[91] "Public Officials" includes elective and appointive officials and employees, permanent or temporary, whether in the career or non-career service including military and police personnel, whether or not they receive compensation, regardless of amount.

[92] A public officer is defined in the Revised Penal Code as "any person who, by direct provision of the law, popular election, or appointment by competent authority, shall take part in the performance of public functions in the Government of the Philippine Islands, or shall perform in said Government or in any of its branches public duties as an employee, agent, or subordinate official, of any rank or class. . ."

[93] "Officer or Employee" refers to a person employed in a government office or agency required to perform specific duties and responsibilities related to the application or request submitted by a client for processing.

[94] Anti-Red Tape Act of 2007, June 2, 2001.

CONCURRING OPINION

LEONEN, SAJ.:

Generosity has its proper time and place. The gifting of lavish holiday trips costing inordinate amounts of money, even when unsolicited, may carry with it an air of impropriety and conduct unbecoming of one's profession.

In this case, the acts of "generosity" may appear, at first glance, to be harmless. However, such displays of largesse must be examined within the context for which they were given. When probed through the lens of the Code of Professional Responsibility and Accountability (CPRA), these acts fall within the scope of misconduct which requires this Court to exercise its disciplinary supervision.

In an Anonymous Letter, it was alleged that Atty. Nilo T. Divina (Atty. Divina) spent hundreds of thousands, if not millions, of pesos in prohibited campaign activities related to the 2022 election of officers for the Integrated Bar of the Philippines (IBP)-Central Luzon Region.[1]

In particular, it was alleged that Atty. Divina brought the incumbent IBP officers to Balesin Island Club in the summer of 2022; gave out cash and gift checks to IBP officers in December 2022; and brought them to Bali, Indonesia in February 2023. The anonymous corn plaint also attached a letter entitled "My Story" by Atty. Jocelyn Z. Martinez-Clemente (Atty. Martinez-Clemente), detailing a meeting she had with Atty. Divina and other lawyers in his office in Makati, where she was asked what position in the IBP she would want if Atty. Divina were to become IBP-Central Luzon Governor. After, she and the other lawyers were allegedly given gift certificates in the amount of PHP 50,000.00.[2]

After thorough investigation, the ponencia found that "there [was] no concrete evidence that indeed Atty. Divina has or had any intention of running for Governor of IBP-Central Luzon."^[3] The ponencia held that the allegations in Atty. Martinez-Clemente's letter were mere conjectures and surmises,^[4] and that all the allegations in the Anonymous Letter were acts committed before members of the House of Delegates—who nominate and elect the Governor for each regional IBP chapter—were elected by their local chapters.^[5] The investigation likewise found that the trips sponsored by Atty. Divina were only "team[]building activities designed to strengthen the IBP-Central Luzon office."^[6]

The ponencia, however, found that Atty. Divina violated Canon II, Sections 1 and 2 of the CPRA, concluding that while his sponsorships of trips to Balesin Island and Bali were done out of generosity, they "crossed the borders on excessive and overstepped the line of propriety."^[7] For this reason, Atty. Divina was found guilty of simple misconduct and fined the amount of PHP 100,000.00. The dispositive portion reads:

ACCORDINGLY, the Court finds Atty. Nilo T. Divina GUILTY of Simple Misconduct in violation of Canon II Section 1 and Section 2 of the Code of Professional Responsibility and Accountability and is hereby FINED PHP 100,000.00 with a STERN WARNING that a repetition of the same or similar offense will be dealt with more severely.

The Court's Resolution dated April 25, 2023 holding in abeyance the election of officers for the Integrated Bar of the Philippine[s] – Central Luzon is hereby lifted. Accordingly, the Integrated Bar of the Philippine[s] – Central Luzon is hereby ORDERED to proceed with the election of its Governor for the 2023-2025 term.

SO ORDERED.^[8] (Emphasis in the original)

I concur with the astute ponencia. While illegal campaigning relative to the election of officers of the IBP are grounds for the exercise of this Court's supervision over the IBP, complainants have not presented direct evidence that Atty. Divina's acts were made specifically for the purpose of having him elected as the IBP-Central Luzon Governor. Absent any concrete basis, Atty. Divina cannot be said to have violated Section 14(4)(b)^[9] of the Revised IBP By-Laws.

I likewise concur that despite not violating the Revised IBP By-Laws, Atty. Divina's acts have still breached Canon II, Sections 1 and 2 of the CPRA. Acts of generosity have their time and place, and when placed in the proper context, Atty. Divina's excessive displays of gratuity, aimed specifically for the benefit of a particular group of people in positions of power, have bordered on improper and unethical behavior.

While I agree with the ponencia that Atty. Divina committed simple misconduct, it is my view that the fine of PHP 100,000.00 would not be a commensurate penalty for the offense. The ponencia already recognizes the "serious nature of Atty. Divina's violation."^[10] The payment of a mere fine will not deter someone of Atty. Divina's affluence from committing further infractions of the same or similar nature. In my view, suspension is a more appropriate penalty for these infractions.

Leniency, like generosity, has its time and place. In order to demonstrate this Court's capacity to remain impartial, even in the face of influence and wealth, we must deal with acts such as those of Atty. Divina's according to the full mandate of the CPRA.

I explain further.

I

Canon II, Sections 1 and 2 of the CPRA provide:

CANON II

PROPRIETY

A lawyer shall, at all times, act with propriety and maintain the appearance of propriety in personal and professional dealings, observe honesty, respect and courtesy, and uphold the dignity of the profession consistent with the high standards of ethical behavior.

SECTION 1. Proper conduct. – A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

SECTION 2. Dignified conduct. – A lawyer shall respect the law, the courts, tribunals, and other government agencies, their officials, employees, and processes, and act with courtesy, civility, fairness, and candor towards fellow members of the bar.

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

According to Atty. Winston M. Ginez, President of the IBP-Zambales Chapter for the 2021-2023 term, the Balesin trip "was a legitimate IBP-Central Luzon team[]building activity" while the Bali trip "was a legitimate post-Christmas party celebration attended by IBP-Central Luzon officers." [11] This was confirmed by Atty. Jade Paulo Tranate Molo, President of the IBP-Bataan Chapter for the term 2023-2025. [12] Atty. Peter Paul S. Maglalang, the incumbent Governor of IBP-Central Luzon, adds that the Bali trip was "organized for both the IBP-Central Luzon and UST Law Alumni Association officers as its Christmas Party and farewell party for the outgoing officers of IBP-Central Luzon." [13]

Atty. Divina, for his part, emphasized that his generosity was "only a way of giving back to the legal community," as such displays were "unconditional and borne out of goodwill." [14] He likewise explained that his generosity was not limited to Central Luzon but was also extended to other IBP chapters, and that he had been doing this "as early as 2012 through various sponsorships and donations, such as Christmas parties, golf tournaments, regional conventions, and the like." [15]

Justice Amy C. Lazaro-Javier implores the En Banc to look at Atty. Divina's generosity as pure acts of selflessness and gratuity for which he should be absolved of any wrongdoing, as it will deter him from doing further acts of gratuity. [16] Justice Ricardo R. Rosario likewise points out that sponsorship of luxury trips should not be considered simple misconduct, as Atty. Divina's acts of generosity "have become routine and no longer out of the ordinary." [17]

It is true that lawyers should not be punished for their generosity. No one should be punished for the exercise of a higher virtue. This Court, in finding certain acts of beneficence improper, does not seek to deter genuine altruism. The practice of our profession often requires us to detach law from emotion and to uphold the rule of law with utmost impartiality. True generosity, along with compassion and empathy, is what separates those who merely seek to practice the law from those who aspire to do justice.

However, the acts of generosity referred to in this case do not refer to charitable acts, donations to the less fortunate, feeding programs, or even to legal aid. The acts complained of in this case are a luxury all-expense-paid trip to Balesin Island Resort, described as a "unique, members-only, private leisure getaway," [18] and an all-expense-paid trip to popular tourist destination Bali, Indonesia. These trips were given to past, incumbent, and future officers of IBP-Central Luzon. They were not given to random members of the IBP or IBP-Central Luzon. They were given by Atty. Divina specifically to the officers named in this case, and during a critical period of the election of officers to IBP-Central Luzon.

As the ponencia points out, these luxury trips have only benefited specific members of the legal community. They

had no beneficial effect to the legal community as a whole.[19]

While it was not conclusively proven that Atty. Divina illegally campaigned in the elections for IBP-Central Luzon, the timing and intended beneficiaries of these luxury trips are highly suspect. If Atty. Divina intended to give back to his IBP Chapter, he need not give out luxury trips to its officers. Even the offer of free legal aid from the talented lawyers of his law firm would be enough.

When seen within its proper context, what is being examined in this case is not Atty. Divina's generosity in general, but rather his particular endowment of gratuity to a specific group of IBP officers.

II

As a general rule, public officers and employees are prohibited from receiving gifts, the only exception being unsolicited gifts of nominal value. Section 7(d) of Republic Act No. 6713[20] provides:

Section 7. Prohibited Acts and Transactions. — In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:

....

(d) Solicitation or acceptance of gifts. — Public officials and employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value from any person in the course of their official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of their office.

The law defines "gift" as "a thing or a right disposed of gratuitously, or any act or liberality, in favor of another who accept it, and shall include a simulated sale or an ostensibly onerous disposition thereof." [21] The definition excludes gifts that are "of nominal or insignificant value not given in anticipation of, or in exchange for, a favor from a public official or employee." [22] Receiving includes "accepting, directly or indirectly, a gift from a person other than a member of his family or relative as defined in this Act, even on the occasion of a family celebration or national festivity like Christmas, if the value of the gift is neither nominal nor insignificant, or the gift is given in anticipation of, or in exchange for, a favor." [23]

Presidential Decree No. 46 prohibits government officials and employees to receive, directly or indirectly, and for private persons to give, or offer to give, any gift, present or other valuable thing on any occasion, including Christmas, when such gift, present or other valuable thing is given by reason of [their] official position." [24] The prohibition is in place regardless of whether or not the gift was given "for past favors or the giver hopes or expects to receive a favor or better treatment in the future from the public official or employee concerned in the discharge of [their] official functions." [25] Under the same law, it is likewise prohibited to throw "parties or entertainments in honor of the official or employee or of [their] immediate relatives." [26]

The rule against the receipt of gifts is even stricter for those sitting on the Bench. Canon 4 of the Code of Judicial Conduct states:

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 13. Judges and members of their families shall neither ask for, nor accept, any gift, bequest, loan or favor in relation to anything done or to be done or omitted to be done by him or her in connection with the performance of judicial duties.

SECTION 14. Judges shall not knowingly permit court staff or others subject to their influence, direction or authority, to ask for, or accept, any gift, bequest, loan or favor in relation to anything done or to be done or omitted to be done in connection with their duties or functions.

SECTION 15. Subject to law and to any legal requirements of public disclosure, judges may receive a token gift, award or benefit as appropriate to the occasion on which it is made provided that such gift, award or benefit might not reasonably be perceived as intended to influence the judge in the performance of judicial duties or otherwise give rise to an appearance of partiality.

An Opinion in Re: Allegations Made Under Oath at the Senate Blue Ribbon Committee Hearing held on September 26, 2013 Against Associate Justice Gregory S. Ong, Sandiganbayan[27] viewed such gifts as outright bribery or gross misconduct based on bribery:

Bribery, like rape, is a transgression that is almost never committed in public view. It thrives and prospers in the dark, in secrecy. But this illegality is not totally unknown to the Members of this Court; we all know that bribery is happening in our midst. The media hints at it; law practitioners talk about it and do not even do so in whispers; clients accept it as a fact of litigation and readily accept their counsels' claim for extra expenses "para kay justice, para kay judge o para kay fiscal" — a grave injustice to many in the judiciary and the prosecution service who have strictly trodden the high road of morality in the public service.[28]

Another Opinion in the same case viewed the acceptance of gifts and favors by members of the Bench as manifestations of partiality. Refusing gifts, even if unsolicited, preserves the judiciary's independence and removes any appearance of impropriety. It was emphasized that:

Judges and justices cannot accept gifts, favors, and accommodations.

The only exception under existing law is that a judge or justice may only receive a gift if:

- 1) it is of nominal value or "a token gift, award or benefit";
- 2) the gift and its value are "appropriate for the occasion on which it is made"; and
- 3) the act of giving and accepting the gift, the gift itself, or the value of such gift "might not reasonably be perceived as intended to influence the judge in the performance of judicial duties or otherwise give rise to an appearance of partiality."

If any of these requirements are not present, the judge or justice commits a serious breach of both law and the canons. Since it is a violation of law and it affects the public's perception of the fundamental values of integrity and independence of the judiciary, it amounts to a grave misconduct punishable by dismissal from the service.[29] (Emphasis in the original, citations omitted)

The situation in this present case is slightly different as it does not involve the giving of gifts to public officers such as judges and justices. The CPRA does not contain a specific prohibition against the receipt of gifts.

Tabuzo v. Gomos,[30] however, defines the IBP as "a sui generis public institution deliberately organized, by both the legislative and judicial branches of government and recognized by the present and past Constitutions, for the advancement of the legal profession." [31] While its By-Laws[32] only allow those in private practice to occupy the position of officers within its organization, its officers are "private practitioners performing public functions delegated to them by this Court." [33]

Here, the recipients of Atty. Divina's gratuity were private practitioners who perform public functions as officers of the IBP. There was, thus, a higher standard of propriety expected from them than from that of other private practitioners. More so in this instance, when the luxury trips coincided with the conduct of IBP elections. It was proper for this Court to look into Atty. Divina's acts within this period, since it is not the first time that this Court encountered allegations of electioneering in the IBP elections.

In *Re: Inquiry into the 1989 Elections of the Integrated Bar of the Philippines*,^[34] this Court noted the blatant electioneering conducted by candidates to the position of national officers and regional officers, remarking:

The candidates and many of the participants in that election not only violated the By-Laws of the IBP but also the ethics of the legal profession which imposes on all lawyers, as a corollary of their obligation to obey and uphold the constitution and the laws, the duty to "promote respect for law and legal processes" and to abstain from "activities aimed at defiance of the law or at lessening confidence in the legal system" (Rule 1.02, Canon 1, Code of Professional Responsibility). Respect for law is gravely eroded when lawyers themselves, who are supposed to be minions of the law engage in unlawful practices and cavalierly brush aside the very rules that the IBP formulated for their observance.

The unseemly ardor with which the candidates pursued the presidency of the association detracted from the dignity of the legal profession. The spectacle of lawyers bribing or being bribed to vote one way or another, certainly did not uphold the honor of the profession nor elevate it in the public's esteem.^[35]

In *Re: Brewing Controversies in the Elections in the Integrated Bar of the Philippines*,^[36] a Concurring Opinion noted the "the crises of leadership of the Integrated Bar of the Philippines at various periods in its history" which "may have alienated many ordinary practitioners from either taking full advantage of the benefits of an integrated bar or wanting to participate in the democratic processes for choosing its leaders."^[37]

While not strictly public officers, IBP officers still exercise public functions. Allegations of impropriety, such as the receipt of gifts or favors, should be properly investigated and proven. This Court should not tolerate instances that would appear to cast doubt on the professionalism and moral character of the members of the IBP.

Gifts such as luxury trips may seem harmless, especially when the giver insists that these were "were unconditional and borne out of goodwill."^[38] However, for these to be considered as truly unconditional is to disregard the common Filipino trait of *utang na loob*.

In *Query of Executive Judge Estrada*,^[39] a judge asked whether or not he should inhibit from a case where one of the counsels before him was the one who recommended him to the Bench. This Court explained this uniquely Filipino trait, of which even members of the Bench may not be immune to:

[M]en of the Bench are not without imperfections. A judge too, experience the "tug and pull of purely personal preferences and prejudices which he shares with the rest of his fellow mortals." The second paragraph of Section 1, Rule 137 of the Revised Rules of Court "made clear to the occupants of the Bench that outside of pecuniary interest, relationship or previous participation in the matter that calls for adjudication, there may be other causes that could conceivably erode the trait of objectivity, thus calling for inhibition. That is to betray a sense of realism, for the factors that lead to preferences or predilections are many and varied." Among these may be the Filipino "*utang na loob*."

Judge Masadao expounds on the matter thus: "For Filipinos, in particular, a sense of gratitude is one trait which invariably reigns supreme over any and all considerations in matters upon which such tender sentiment may somehow inexorably impinge. Generally, whoever owes a debt of favor endeavors to repay the same in any discernible fashion as soon as the opportunity therefore emerges."

Judge Masadao is not necessarily stretching the Filipino "*utang na loob*" – gratitude which renders a man

beholden to another, a sense of obligation which is valued as highly as pride and honor – beyond its proper limits. The best way to show one's "utang na loob" to whoever recommended him is to do honor to the position, not only in rendering just, correct, and impartial decisions but doing so in a manner free from any suspicion as to their fairness and impartiality and as to the integrity of the judge.[40] (Citations omitted)

"Utang na loob is created through an unsolicited presentation of goods and services. . . . The gift activates a unilateral relationship of indebtedness reversible only by means of a properly offered return gift." [41] It is a debt of gratitude, unilaterally given and unsolicited, made for the sole purpose of requiring reciprocity from the receiver at some point in time. It is never requested; it is always offered. The debts appear to be unconditional, but the conditions are always attached with unseen strings:

Utang na loob is built on a set of firm explicit social expectations. Failure to meet any of these leads to social stress or cleavage of varying degree. No matter how inadvertent, failure on the part of the person of whom particular behavior is expected can generate ill will, humiliation, shame, and, most importantly, desire for retaliation on the part of the one expecting. Further, it can have effects of wider implication. Breakdown at any point threatens more than the immediate relationship between two individuals; it threatens the functioning of a whole network of relationships.[42]

Future repayment may not always be the same as what was bestowed. Recipients may repay this gratitude through something as simple as goodwill. For example, if the giver commits a graver impropriety or a more serious infraction in the future, the recipient could come to their defense and insist that the giver is a good person who would not do those things.

Atty. Divina can assert that his gratuitousness comes with no strings and is freely given. However, our culture is not one to merely accept unilateral and unsolicited gifts without any thought of repayment. Whether Atty. Divina intended for these gifts to be unconditional is irrelevant. What is clear is that Atty. Divina created a sense of gratitude within the beneficiaries of these luxury trips, which may influence their future dealings with him. In future disciplinary cases against him, for example, these beneficiaries of his magnanimity would be ready to come to his defense despite clearer and more direct evidence of his infractions.

It is this behavior that is being disciplined by this Court in this case. This Court is not punishing Atty. Divina's generosity. It is reminding him of his sense of propriety in dealing with his colleagues in the legal community.

Excessive and luxurious gifts to lawyers that are or will be in positions of power within the IBP during the election of officers carries an air of suspicion. Even when repayment is not expected, the sense of gratitude remains. It is an invisible string that can always be pulled during a critical time.

There was no direct evidence that Atty. Divina used these gifts to influence the current IBP elections. However, it cannot be denied that the recipients of these gifts now feel a sense of gratitude to him. If they do not, their peers could see them as ungrateful to their erstwhile patron. Such a situation would not arise had Atty. Divina maintained a sense of propriety in his personal dealings within the legal community. Canon II of the CPRA mandates:

A lawyer shall, at all times, act with propriety and maintain the appearance of propriety in personal and professional dealings, observe honesty, respect and courtesy, and uphold the dignity of the profession consistent with the high standards of ethical behavior.

....

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

Atty. Divina's gifts, while generous, were nonetheless improper. It was properly characterized by the ponencia as misconduct that adversely reflected on one's fitness to practice law.

III

Canon VI, Section 34 of the CPRA defines simple misconduct as "such misconduct without the manifest elements of corruption, clear intent to violate the law, or flagrant disregard of established rules," which is a less serious offense. Canon VI, Section 37 (b) sanctions less serious offenses with the following penalties:

(b) If the respondent is found guilty of a less serious offense, any of the following sanctions, or a combination thereof, shall be imposed:

(1) Suspension from the practice of law for a period within the range of one (1) month to six (6) months, or revocation of notarial commission and disqualification as notary public for less than two (2) years;

(2) A fine within the range of [PHP] 35,000.00 to [PHP] 100,000.00.

The ponencia recommends a penalty of a fine of PHP 100,000.00. In my view, a fine is not the proper penalty in this case.

The CPRA mandates either suspension, revocation of notarial commission, a fine, or a combination of any of these penalties. Atty. Divina is being sanctioned precisely because he used his wealth to commit improprieties. The gravity of the offense would not be felt by Atty. Divina if this Court allows him the simple expediency paying a fine. For Atty. Divina—or any other lawyer—to be deterred from committing the same or similar acts in the future, the proper penalty should be suspension from the practice of law.

ACCORDINGLY, I vote to find Atty. Nilo T. Divina GUILTY of simple misconduct in violation of Canon II, Section 1 and Section 2 of the Code of Professional Responsibility and Accountability, and to impose a penalty of SUSPENSION from the practice of law for six months, with a STERN WARNING that a repetition of the same or similar offense will be dealt with more severely.

[1] Ponencia, p. 4.

[2] Id.

[3] Id. at 18.

[4] Id.

[5] Id.

[6] Id. at 19.

[7] Id. at 23.

[8] Id. at 24–25.

[9] Section 14. Prohibited acts and practices relative to elections. — The following acts and practices relative to the elections of officers are prohibited, whether committed by a candidate for any elective office in the Integrated Bar or by any other member, directly or indirectly, in any form or manner, by themselves or through another person:

....

(4) For the purpose of inducing or influencing a member to withhold his or her vote, or to vote for or against a

candidate: (a) payment of the dues to the Integrated Bar or other indebtedness of any member to any third party; (b) giving of food, drink, entertainment, transportation, or any article of value, or similar consideration to any person, or (c) making a promise or causing an expenditure to be made, offered, or promised to any person.

[10] Ponencia, p. 23.

[11] Id. at 9.

[12] Id.

[13] Id. at 7.

[14] Id. at 10.

[15] Id.

[16] J. Lazaro-Javier, Reflections, p. 6.

[17] J. Rosario, Reflections, p. 2.

[18] Alphaland Corporation, Balesin Island Club, A Private Island Paradise for Members, available at <https://alphaland.com.ph/balesin-island-club/> (last accessed March 12, 2024).

[19] Ponencia, p. 23.

[20] Republic Act No. 6713 (1989), Code of Conduct and Ethical Standards for Public Officials and Employees.

[21] Republic Act No. 6713 (1989), sec. 3(c).

[22] Republic Act No. 6713 (1989), sec. 3(c).

[23] Republic Act No. 6713 (1989), sec. 3(d).

[24] Presidential Decree No. 46 (1972).

[25] Presidential Decree No. 46 (1972).

[26] Presidential Decree No. 46 (1972).

[27] 743 Phil. 622 (2014) [Per Curiam, En Banc].

[28] J. Brion, Separate Concurring Opinion in Re: Allegations Made Under Oath at the Senate Blue Ribbon Committee Hearing held on September 26, 2013 Against Associate Justice Gregory S. Ong, Sandiganbayan, 743 Phil. 622, 683 (2014) [Per Curiam, En Banc].

[29] J. Leonen, Separate Concurring Opinion in Re: Allegations Made Under Oath at the Senate Blue Ribbon Committee Hearing held on September 26, 2013 Against Associate Justice Gregory S. Ong, Sandiganbayan, 743 Phil. 622, 732 (2014) [Per Curiam, En Banc].

[30] 836 Phil. 297 (2018) [Per J. Gesmundo, Third Division].

[31] Tabuzo v. Gomos, 836 Phil. 297, 298 (2018) [Per J. Gesmundo, Third Division].

[32] Section 4. Non-political bar. — The Integrated Bar is strictly non-political, and every activity tending to impair this basic feature is strictly prohibited and shall be penalized accordingly. No lawyer holding an elective, judicial, quasi-judicial, or prosecutory office in the Government or any political subdivision or instrumentality

thereof.

[33] *Tabuzo v. Gomos*, 836 Phil. 297, 313 (2018) [Per J. Gesmundo, Third Division].

[34] 258-A Phil. 171 (1989) [Per Curiam, En Banc].

[35] *Id.* at 196.

[36] 709 Phil. 7 (2013) [Per J. Mendoza, En Banc].

[37] J. Leonen, Concurring Opinion in *Re: Brewing Controversies in the Elections in the Integrated Bar of the Philippines*, 709 Phil. 7, 105 (2013) [Per J. Mendoza, En Banc].

[38] Ponencia, p. 10.

[39] 239 Phil. 1 (1987) [Per J. Gutierrez, En Banc].

[40] *Id.* at 6–7.

[41] Charles Kaut, *Utang Na Loob: A System of Contractual Obligation among Tagalogs*, 17 SOUTHWESTERN JOURNAL OF ANTHROPOLOGY 3, 258 (1961).

[42] *Id.* at 269.

DISSENTING OPINION

HERNANDO, J.:

"One should never be deprived of the joy of giving, a universal good conduct."

The crux of the controversy is the generous sponsorship of Atty. Nilo Divina of the activities of the IBP-Central Luzon officers. Plainly, Atty. Divina is being made to account for his generosity. I find this lamentable considering that a benevolent act should never be considered as a violation of law or ethical rule, especially when there is absolutely no proof of any sinister or ill motive on the part of the benefactor, as in this case. Sadly, the Majority found Atty. Divina's benevolence as inappropriate, transcended the bounds of propriety and amounted to a misconduct. The question that may now be posed is: When does one's benevolence become a misconduct? Do we evaluate the propriety of one's generosity based on the amount given, or consider whether bad faith, ill intention, or malice accompanied the act?

The ponencia found Atty. Divina to have committed a misconduct by focusing on the excessive amount of his sponsorship. Plainly, the Majority evaluated Atty. Divina's culpability based on the amount of the donations, and not on his real intentions. I do not agree with this method of evaluation.

The Majority found that Atty. Divina's sponsorship of the Balesin and Bali trips of the IBP-Central Luzon officers to have "crossed the borders on excessive and overstepped the line of propriety" and "fell below the exacting standards of conduct expected of a member of the legal profession" amounting to a violation of the Code of Professional Responsibility and Accountability (CPRA).[1] But how do we exactly know the border of excessiveness or the line delineating propriety from impropriety? Do we just base it on the amount of the gift, or do we look deeper into whether the act is coupled with bad faith or ill intent? How much is excessive vis-à-vis the financial resources of a benefactor? When does one's generosity transcend into a misconduct?

Atty. Divina has the right to be presumed innocent of the charges against him

There are a few people who truly find joy in giving without expecting anything in return. A generous act, at face value and without prejudice, is a laudable trait. As such, Atty. Divina's act of financially supporting the activity of the IBP-Central Luzon officers, by itself, and without any proof of bad faith or malice, should be characterized as a pure benevolent act, and not a misconduct.

In particular, there is a complete absence of proof that Atty. Divina acted with impropriety when he paid for the trips, which turned out to be legitimate activities of the IBP. There was no proof that Atty. Divina was campaigning for himself or any party or was spurred by corrupt or ill motive. There is nothing in the records to show that Atty. Divina was acting in furtherance of his interests or was trying to influence the results of the forthcoming IBP elections, of which the official campaign period or filing of candidacy had yet to be formally opened.

Considering the utter lack of evidence that he was ill motivated, Atty. Divina must be accorded the benefit of the doubt and presumed to have acted with innocence and good faith in his personal and professional dealings. As this Court held in *Tan v. Alvarico*,^[2] "[Attorneys enjoy] the legal presumption that [they are] innocent of the charges against [them] until the contrary is proved, and that as [officers] of the Court, [they are] presumed to have performed [their] duties in accordance with [their] oath."^[3]

In administrative proceedings, the quantum of proof is substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion, and that the burden of proof rests on the complainant to establish the allegations in the complaint.^[4] Moreover, basic is the rule that reliance on conjectures and suppositions will render an administrative complaint devoid of any basis. Mere suspicion or unfounded charges cannot be given credence. Thus, the failure of complainants to discharge their burden of proof by substantial evidence warrants the dismissal of the administrative complaint, as in this case. The Court simply has no basis to impose an administrative sanction on the respondent.^[5]

Clearly, Atty. Divina was found guilty of misconduct based purely on speculations, prejudices and conjectures. As expressly acknowledged in the ponencia itself, the charge against respondent of committing "patently illegal, prohibited and corrupt campaign activities" appears to be based on mere conjectures and surmises.^[6]

Considering that no concrete and substantial evidence had been presented to establish that respondent had any intention of joining the race for the IBP Governor, or that his act of covering the trip expenses had anything to do with influencing the results of the forthcoming elections, then there is absolutely nothing to support the Majority's finding of Simple Misconduct, simply because his donations to the IBP were "extravagant and excessive."

Simple Misconduct requires that a transgression of established and definite rules of action be committed

I respectfully dissent in the ponencia's finding that Atty. Divina is guilty of Simple Misconduct for violating CPRA, Canon II, Sections 1 and 2.^[7]

Simple Misconduct is a less serious offense, there being no manifest elements of corruption, clear intent to violate the law, or flagrant disregard of established rules.^[8]

Jurisprudence has recognized misconduct as an intentional wrongdoing or a deliberate violation of a rule of law or standard of behavior,^[9] whether work-related or not.^[10] To stress, there must be a transgression of some established and definite rule of action.^[11]

Here, the ponencia categorically acceded that Atty. Divina did not violate Section 14 of the Revised IBP By-Laws.^[12] Yet, it proceeded to conclude that there was a misconduct considering that the subject sponsorships were unreasonable, unacceptable, and excessive that overstepped the line of propriety.^[13]

However, by what standards did the ponencia measure the alleged ethical transgressions of the respondent as to conclude that they were unreasonable, unacceptable, excessive, and overstepped the line of propriety? Did the ponencia categorically define what is unreasonable, unacceptable, excessive, or proper? Did the ponencia provide guideposts for its determination?

A closer examination of the ponencia would reveal that it did not provide a criteria or guideposts in considering the reasonableness, acceptability, excessiveness, or propriety of the questioned acts of the respondent. What is clear though is that respondent has not violated any established and definite rule of action. Consider these:

First, the supposed violations of Canon II, Sections 1 and 2, have not been sufficiently demonstrated.

As reference, CPRA, Canon II, Section 1, prohibits unlawful, dishonest, immoral, or deceitful conduct. In *Gonzales v. Atty. Bañares*,^[14] the Court operationalized these terms as follows:

Rule 1.01, [Now, CPRA, Canon II, Sec. 1] 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. 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 straightforwardness, 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.^[15]

Meanwhile, Section 2, Canon II prohibits a scandalous behavior that reflects poorly on one's fitness to practice law and brings discredit upon the profession.

Given the foregoing, "excessive generosity" hardly qualifies as an unlawful, dishonest, immoral, or deceitful conduct. First, excessive benevolence cannot be considered as an "act or omission that is contrary to, or prohibited or unauthorized by law, or in defiance of, disobedient to, or disregards the law." The complainant utterly failed to identify the law or rule that was supposedly transgressed by Atty. Divina. There was also absolutely no showing how such "excessive generosity" discredited the legal profession, or how it poorly reflected on respondent's ability to practice law. There was no proof, whatsoever, that the funds used for the trips came from dubious sources.

Neither could Atty. Divina's actions be considered as scandalous, in the absence of any showing of intimidation, harassment or even discrimination. Atty. Divina's financial contributions are scarcely discriminative, as these have not been exclusively limited to the IBP Central Luzon officers but were extended to other local chapters like Manila, Cebu, Misamis Oriental, and through other activities such as golf tournaments, regional conventions, etc.^[16] Significantly, that the sponsorships entailed huge amounts could not likewise be considered as scandalous, as this is relative depending on the financial capacity of the donor, and the standing and needs of the beneficiary.

Common to both Sections 1 and 2 of Canon II is the apparent moral depravity of the behavior and the prejudice or damage directly caused to others as a consequence thereof. The act of respondent hardly elevates to this level. It cannot be said that Atty. Divina's supposed transgressions were knowingly and willfully committed with a wanton purpose. While it remains to be seen if and how his financial contributions have benefitted the legal profession as a whole, there is an utter lack of showing that they have directly injured even a few.

Second, in justifying why it must punish Atty. Divina's excessive generosity, the ponencia mentioned the blurring of lines between altruism as a mere expression of gratitude vis-à-vis influence peddling.^[17]

CPRA, Canon I, Section 2, mandates a lawyer to rely solely on the merits of a cause and not to exert, or give the

appearance of, any influence on the authority of the court, tribunal, or other government agency, or its proceedings.[18] Corollarily, Canon II, Section 15 obliges lawyers to observe propriety in all dealings and prohibits them from making claims of power, influence, or relationship with officers and personnel of courts, tribunals and government agencies. In *Rodco Consultancy and Maritime Services Corp. v. Concepcion*,[19] respondent therein was found liable for the prohibited conduct of influence peddling. The Court therein explained how it does not matter whether the respondent's boasts of connections in the right places are true nor whether such connections are actually used, as the mere claim of influence already inflicts damage and assaults the integrity of the legal system.

However, nowhere in the ponencia was it discussed or even alluded to, that Atty. Divina himself made any claims or representations of wielding influence or power over his connections with the IBP leadership. Other than the subject elections which Atty. Divina is himself not a candidate, there is also no indication that any pending matter against him was lodged before the IBP, such that his sponsoring of the trips of some officers may adversely affect its resolution.

The ponencia further holds that the prohibition against soliciting and accepting gifts extends even if the same was not in exchange for the performance of an act or favor in order to avoid a situation wherein the recipient may feel compelled to return the favor or that he owes a debt of gratitude or "utang na loob" to the giver.[20] However, such a statement only confirms that the ponencia engages in speculation. At this point, the ponencia is merely speculating that, in the future, Atty. Divina would attempt to call on his beneficiaries and exert his influence over them. Similarly, the ponencia already surmises that the recipients will definitely be swayed by the influence wielded by the respondent, and that they would not be capable of performing their duties regularly, properly, and in good faith. Plainly, a conclusion based on surmises and imagination would not stand legal challenge or scrutiny.

Stated otherwise, it cannot be presumed that the recipients of Atty. Divina's financial contributions would respond with utang na loob, for there is simply no way of delving into their psyches and thought processes. Though such concept may be validly observed to be a part of Filipino culture, there is no concrete showing that Atty. Divina's generosity would actually trigger a feeling of indebtedness from the responsible IBP officers. In any event, to hastily assume that the latter will act according to such a motivation and to subject respondent to a disciplinary sanction for something that is yet uncertain, would not only be unjust but also unduly preemptive of not just the personal but professional judgment of the IBP officers. To stress, absent any showing of ill motive and bad faith, the supposed recipients of Atty. Divina's "excessive generosity" should always be presumed to have performed their duties regularly, responsibly and with integrity. Given the foregoing, I respectfully disagree with the conclusion that Atty. Divina ought to be reminded of his "sense of propriety in dealing with his colleagues in the legal community" as his actions thus far appear to be well-intentioned for the benefit of the IBP and its members.

Third, Canon II, Section 21 of the CPRA provides:

Section 21. Prohibition against gift-giving and donations. — A lawyer shall not directly or indirectly give gifts, donations, contributions of any value or sort, on any occasion, to any court, tribunal or government agency, or any of its officers and personnel.

Notably, this is a new principle imposed by the CPRA and there has yet been no jurisprudential interpretation on the matter. While the phraseology of the provision seems to impose an absolute, broad, and unqualified prohibition, surely, this cannot contemplate donations and contributions by lawyers to the IBP.

In the first place, although the IBP is a sui generis public institution, it is still not a court, tribunal, or government agency. It is only a semi-governmental organization but still possesses a corporate personality. To construe the

prohibition as including donations and contributions to the IBP will deprive the same of virtually all acts of liberality from its own constituent members and would render nugatory its expressly stated corporate power "to solicit and receive public and private donations and contributions." [21] The crippling effect of such an interpretation on the IBP as a corporate body and the legal professionals who compose it is all too apparent.

There is a lack of discernible guideposts on what constitutes "excessive generosity"

How should contributions, donations, and other acts of liberality be measured vis-à-vis a misconduct? In the absence of a finding of corruption, malice, or ill motive, when should they be deemed excessive and improper?

I submit that the concept of "excessive generosity" still lacks definite and clear guideposts for construction. In fact, it appears that this concept is very fluid as it depends on multiple factors. It cannot be measured with precision as it depends on the attendant circumstances. And circumstances vary in each case. The wealth or financial capacity of a giver is always relative, as well as the needs and standing of the beneficiaries.

Meanwhile, in the evaluation of factual circumstances, should "excessiveness" also be measured by frequency or timing of such contributions? Malice was imputed against Atty. Divina in view of the timing of his series of sponsorships, relative to the succeeding election season. However, I am of the view that the fact that his financial contributions to the IBP began as early as 2012 already negates any claims of malice and excessiveness. Will the conclusion be different if Atty. Divina gave a one-time, isolated, but substantial donation?

Notably, the ponencia admits as much that it is only now that it is faced with the difficult task of calibrating guidelines on what constitutes excessive generosity. From the foregoing, it then becomes obvious that complete parameters and clear guideposts have yet to be established before the Court can define this new gray area of what are the improper acts of liberality, when there is otherwise no finding of illegality, corruption or ill motive.

Excessive generosity is not equivalent to Simple Misconduct that warrants the imposition of an administrative sanction on the giver and the recipients

If the Court is determined to punish "excessive generosity" as Simple Misconduct, "excessive generosity" must first be clearly defined. In an attempt to quantify what is excessive generosity, the ponencia explains:

Thus, if an individual is willing to contribute, donate or volunteer to further the efforts of the IBP, it must be tempered by the nature and purpose of the activity which in itself should be in furtherance of the goals and objectives of the IBP and for the direct benefit of its members and should not solely be for the interest, use and enjoyment of the officers of the IBP. [22]

In effect, the ponencia is faulting Atty. Divina for limiting his sponsorship only for the benefit of the chapter officers, for not supporting a particular activity of the chapter, and for not extending his generosity to all the chapter members or the whole IBP as an organization. Suffice it to state that full discretion lies on the respondent on how he would dispose his resources. There is absolutely no law which requires him to extend his sponsorship to all chapter members and not just to the officers, or even to the whole IBP organization. At this juncture, I wish to stress that it is clear as crystal that Atty. Divina did not violate any rule or law as to elevate his act to a simple misconduct. In any case, the sponsored trips were only among the donations and sponsorships that Atty. Divina has extended to the IBP. He has also done numerous activities of the same nature in the past which directly benefited the IBP members.

The notion that generosity must be confined within these parameters to avoid being "excessive" imposes a restrictive framework that goes against the very nature of giving. Generosity is inherently subjective. The giver might want to reward only a select few and not the whole organization, and the amount thereof depends on his financial capacity and innate generosity. This is fully within the giver's discretion, and exercising such a

discretion is not violative of any rule or law. So how can there be Simple Misconduct?

At this juncture, it must also be mentioned that Atty. Divina had been supporting the IBP as early as 2012 through various sponsorships and donations. In all those years, Atty. Divina's generosity had never been questioned nor was it ever shown that he had received any benefit or personal gain from it. Specifically in this instance, the donations and sponsorships over the years were definitely not to claim the position of IBP Governor for he was never a candidate, nor did he aspire to be one. Thus, it is downright unfair and unreasonable to hold Atty. Divina administratively liable now for simply wanting to do a selfless act for the benefit of the legal organization.

Assuming that there are sufficient parameters in determining "excessive generosity" and that respondent's act amounted to "excessive generosity" still, this does not amount to a Simple Misconduct. As earlier mentioned, Simple Misconduct is defined as misconduct without the manifest elements of corruption, clear intent to violate the law or flagrant disregard of established rules. Simple Misconduct presupposes a deviation from established rules on what excessive generosity is – one which is clearly still lacking at this point. Generosity, even if excessive, does not violate any law or set of established rules. Moreso in this context where it is purely driven by genuine altruism. By misclassifying and treating "excessive generosity" as Simple Misconduct, absent any proof of ulterior motive or personal gain, the Court is penalizing an act which is fundamentally good. Simply put, there is nothing in the records to prove that Atty. Divina clearly intended to violate the law or flagrantly disregarded a set of established rules, in this case, the CPRA.

Lastly, deterring further acts of gratuity from Atty. Divina interferes with the latter's right to freely associate with other members of the legal profession, which is a guaranteed right under the Constitution.[23] Additionally, it interferes with Atty. Divina's right to dispose of one's resources under Article 428 of the New Civil Code which provides that the owner has the right to enjoy and dispose of a thing, without other limitations than those established by law.[24] Notably, there is no limitation under the law on how much one can donate in one's lifetime, nor are there any restrictions applicable to the present case.

The retroactive application of the guidelines set forth by the ponencia would work injustice to Atty. Divina and similarly situated lawyers

To recall, Atty. Divina has been supporting the IBP through various sponsorships and donations, such as Christmas parties, golf tournaments, regional conventions, and similar activities. He sponsors IBP activities in different Chapters like Central Luzon, Manila, Makati, Quezon City, Cebu, Bicolandia, and Misamis Oriental.[25] The sponsored trip of the IBP-Luzon Officers for their team building activities in Balesin, Quezon and Bali, Indonesia, happened in 2022 and February 2023, respectively. Thus, during that period, the CPRA has yet to lapse into effectivity on May 30, 2023.

Section 1 of the General Provisions of the CPRA provides a transitory provision, viz:

Section 1. Transitory Provision. — The CPRA shall be applied to all pending and future cases, except to the extent that in the opinion of the Supreme Court, its retroactive application would not be feasible or would work injustice, in which case the procedure under which the cases were filed shall govern.

To stress, the retroactive application of the CPRA should not be applied when it would result to injustice. With all due respect, I submit that finding Atty. Divina guilty of Simple Misconduct would be a manifest injustice, especially in the absence of preexisting guidelines on how generous lawyers, like Atty. Divina, should manage their donations to various individuals and institutions. The Court, in exercising its power of supervision to regulate financial contributions to the IBP, should not operate to prejudice Atty. Divina. Thus, I am of the view that this Court must exercise its discretion under Section 1 to temper the application of the CPRA.

In addition, finding Atty. Divina guilty of Simple Misconduct for making donations to the IBP and sponsoring trips abroad for Chapter officers would set a dangerous precedent to the rest of the legal profession. Sanctioning Atty. Divina for his magnanimous benevolence could potentially prevent other members of the Bar from acting on their philanthropic desire to provide support to the IBP as it may be misconstrued to be tainted with negative intentions and may result in administrative liability. Verily, the ponencia creates an absurd situation where, instead of commending lawyers for giving back to the legal community, we are condemning them and assuming that they are acting only out of self-interest and personal and political gain.

Stated otherwise, the disciplinary action against Atty. Divina could create an environment where generous lawyers are subjected to unwarranted scrutiny and administrative complaints, simply based on their charitable actions. Rather than being an admirable virtue, the generosity of a lawyer will now be automatically viewed with ulterior motive. Worse, due to the retroactive application of the guidelines in the ponencia, "excessive generosity" may now be weaponized by anybody - such that well-intentioned lawyers who have been consistently donating to an institution may be subjected to administrative complaints just by the mere allegation of "excessive generosity". This would open the floodgates to administrative cases against similarly situated lawyers as Atty. Divina, who now have the burden of proving that their donations are for a noble purpose and not excessive. To a great and worrisome extent, this situation produces a "chilling effect". This effect will cause lawyers to be wary with their donations. As a result, they would hold back on their philanthropic activities. This will have far-reaching implications, especially on institutions which rely heavily on such funds.

Genuine altruism should be lauded rather than penalized. The imposition of restrictions further than what is required by public policy may well be regarded as unjust and tending in a contrary direction, and ultimately, dampens the generous impulse of the heart.[26]

The imposition of administrative sanctions against Attys. Peter Paul S. Maglalang (Maglalang), Winston M. Ginez (Ginez), Jocelyn "Jo" M. Clemente (Clemente), Jade Paulo T. Molo (Molo), Enrique V. Dela Cruz, Jr. (Dela Cruz), and Jose I. Dela Rama (Dela Rama) contravenes the basic rules of fair play and justice

No less than the Constitution provides that every person is guaranteed the right to due process before any judgment against them is issued. In administrative proceedings, it is necessary that respondents are informed of the charges against them and given an opportunity to refute them.[27]

First, I submit that the ponencia failed to take into consideration that Attys. Maglalang, Ginez, Clemente, Molo, Dela Cruz, Jr., and Dela Rama (collectively, "Atty. Maglalang, et al."), had no opportunity to defend themselves. It bears emphasis that the present case stemmed from an anonymous letter filed against Atty. Divina for his purported illegal campaigning activities relative to the election of the IBP-Central Luzon Region. The anonymous letter highlighted the instances in which Atty. Divina "allegedly spent hundreds of thousands, if not millions of pesos, in prohibited campaign activities." [28] It is thus highly unwarranted to suddenly penalize Atty. Maglalang, et al. when they had not been properly apprised that there were even existing charges against them.

While Atty. Maglalang, et al. were directed by this Court to file their respective Comments on the anonymous letter, [29] it cannot be said that the same satisfies their right to due process since they only pertained to the circumstances surrounding the Balesin and Bali trips sponsored by Atty. Divina and his supposed intention to run in the upcoming IBP elections. In no way can their respective Comments be considered as an opportunity to rebut any allegations against them, since in the first place, the anonymous letter was filed only against Atty. Divina for his purported engagement in illegal campaign activities. Atty. Maglalang, et al. could not have known at the time of the filing of their Comments that the administrative complaint against Atty. Divina would extend to them as well.

Otherwise stated, there was no showing that Atty. Maglalang, et al. were properly apprised of the charges against them considering that the anonymous letter and their respective Comments thereto only delved into Atty. Divina's alleged illegal campaigning activities in connection with the upcoming elections of the IBP-Central Luzon Region. The fact that their names were merely enumerated in the anonymous letter cannot be taken as sufficient proof that they were duly informed of the charges and given the chance to present their case.

Based on the foregoing, Atty. Maglalang, et al. were clearly deprived of their right to due process. As this Court held in *Ombudsman v. Conti*:^[30]

In administrative proceedings, due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend oneself. In such proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process... The essence of due process, therefore, as applied to administrative proceedings, is an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of. Thus, a violation of that right occurs when a court or tribunal rules against a party without giving the person the opportunity to be heard.^[31] (Emphasis supplied)

Second, I am also of the view that the absence of a full discussion on the administrative liabilities of Atty. Maglalang, et al., violates their right to procedural due process. In *Seares Jr. v National Electrification Administration Board*,^[32] the Court held the judgment of administrative liability as void for being violative of the Constitutional requirement of due process, i.e., that the parties are informed of how a decision was decided, with an explanation of the factual and legal reasons that led to the conclusions of the court. The Court therein commiserated with the petitioner because the administrative ruling failed to pinpoint which of the acts allegedly committed exactly pertained to the infraction charged. Where the administrative agency simply made swift shotgun statements regarding the commission of infractions, without any effort to discuss and draw correspondence therein with the supposed evidence or factual findings on record, the Court held that such unjustly hampered petitioner's ability to fully and intelligently focus on his defense or appeal.^[33]

The ponencia took great lengths to justify why Atty. Divina's excessive generosity was marked by impropriety or at least created the appearance of impropriety, but lackadaisically arrived at the conclusion that the other respondents should equally be held liable for the same offense and punished with the same sanction, merely because they were supposedly the beneficiaries of Atty. Divina's gifts. I respectfully submit that the ponencia disregarded the well-settled principle that attorneys enjoy the legal presumption of innocence until proven otherwise and that as officers of the Court, they are presumed to have performed their duties in accordance with their oath.^[34]

It appears that the ponencia imposed administrative liabilities on Atty. Maglalang, et al. based simply on a sweeping conclusion that "[t]heir cavalier acceptance of the 'gifts' extended to them while being officers of the IBP cast a serious doubt on their independence, integrity, and impartiality as well as that of the IBP, as an institution" and on a flimsy presumption that their receipt of the gifts "would make them beholden to the giver and this feeling of owed gratitude may cloud their judgment in the future."^[35] Absent any discussion on how such a verdict was reached, and contrary to the established precept of presumption of innocence, it seems then that the ponencia imputed guilt on Atty. Maglalang, et al. based on pure speculation that they would feel indebted to Atty. Divina by joining the Balesin and Bali trips sponsored by the latter.

Moreover, I submit that the ponencia's reliance on Republic Act No. 3019 and Republic Act No. 6713 to draw parallelisms with the prohibition against direct or indirect receipt of gifts by public officers, is misplaced. It declared:

The Court's ruling in *Tabuzo* simply means that IBP Officers are not public officers for purposes of

prosecution under the relevant laws. Nevertheless, the Court may draw parallelism from these laws in viewing what constitutes improper conduct for purposes of imposing administrative liability.[36]

Even if the IBP, through the Commission on Bar Discipline, may be delegated by the Supreme Court to assist in the conduct of fact-finding investigations and to make recommendations regarding disciplinary actions against lawyers, the Court in *Tabuzo v. Gomos*[37] held that such delegated function is public in nature, but the responsible officers performing such function are still private individuals, and not public officers.[38]

Thus, it was error to apply the exact same standards under those laws, especially those prohibitions aimed at quelling graft, corruption, and bribery, when *Tabuzo* clearly held that IBP officers are not within the same category of persons. I disagree with the ponencia that *Tabuzo*'s categorization of public officers is limited only for prosecution under the above laws but that these laws may be invoked for the imposition of administrative liability. *Tabuzo* expressly clarified:

Finally, IBP Commissioners cannot be held administratively liable for malfeasance, misfeasance and non-feasance in the framework of administrative law because they cannot strictly be considered as being "employed" with the government or of any subdivision, agency or instrumentality including government-owned or controlled corporations.

Nonetheless, IBP Commissioners and other IBP officers may be held administratively liable for violation of the rules promulgated by this Court relative to the integrated bar and to the practice of law. Even if they are not "public officers" in the context of their employment relationship with the government, they are still "officers of the court" and "servants of the law" who are expected to observe and maintain the rule of law and to make themselves exemplars worthy of emulation by others.[39] (Emphasis supplied, citations omitted)

Tabuzo nuanced that IBP officers may indeed be held administratively liable, not under the above laws on public officers but for a different set of standards: violation of Court-imposed rules relative to the integrated bar and the practice of law. To my mind, this pertains to the CPRA which is the latest and most comprehensive law governing the matter. Notably, while the CPRA's Section 30 of Canon II on Propriety clearly prohibits a government lawyer (and thus, public officer) from both the giving and receiving of gifts or anything of value, Section 21 of the same canon provides that the prohibition against lawyers in general, is only as to the giving of gifts and donations, viz.:

CANON II
Propriety

SECTION 21. Prohibition Against Gift-Giving and Donations. — A lawyer shall not, directly or indirectly, give gifts, donations, contributions of any value or sort, on any occasion, to any court, tribunal or government agency, or any of its officers and personnel. (Emphasis supplied)

SECTION 30. No Financial Interest in Transactions; No Gifts. — A lawyer in government shall not, directly or indirectly, promote or advance his or her private or financial interest or that of another, in any transaction requiring the approval of his or her office. Neither shall such lawyer solicit gifts or receive anything of value in relation to such interest.

Such lawyer in government shall not give anything of value to, or otherwise unduly favor, any person transacting with his or her office, with the expectation of any benefit in return. (Emphasis supplied)

As the ponencia would espouse, if the Court is truly determined to exercise its power to "discipline lawyers for the act of giving and receiving gifts if the context and situation in which it is made constitutes improper conduct,"[40] it is submitted that the above distinction in phraseology should at least be considered in contextualizing the improper conduct it now intends to restrict.

Finally, in *Re: 1989 Elections of the IBP*,[41] allegations of intensive electioneering, excessive spending by

candidates, use of government planes, and officious intervention by certain public officials to influence voting led to the suspension of the oath-taking of the 1989 IBP officers-elect pending investigation. Despite finding the respondents therein guilty of illegal electioneering,[42] the Court only annulled the elections and disqualified the respondents from the subsequent special elections. Notably, no administrative sanctions were imposed on the candidates who were found to have committed prohibited acts and reprehensible practices relative to the IBP elections. I therefore submit that in drawing parallelisms with Re: 1989 Elections of the IBP, the ponencia should likewise consider the extent of legal consequences and penalties. Given that no violation of the IBP By-Laws on electioneering was found in the present case, it is wholly unwarranted to subject the respondents to even a finding of administrative liability and a fine.

All told, there is simply no evidence of Atty. Maglalang, et al.'s supposed violation of their oath or duty as lawyers which warrants the imposition of administrative sanctions upon them. It must be borne in mind that while this Court shall not avoid its responsibility of meting out the proper disciplinary punishment upon erring lawyers who fail to live up to their sworn duties, the Court shall also not wield its axe against those the accusations against whom are not indubitably proven.[43] Much less in this case where the accusations are glaringly baseless and unsubstantiated.[44]

In conclusion, it is my position that: 1) excessive generosity is not equivalent to Simple Misconduct that warrants the imposition of an administrative sanction on the giver and the recipients; 2) in the absence of substantial evidence to the contrary, Atty. Divina must be presumed innocent of the charges against him; and 3) the administrative liability and consequent penalty of Attys. Maglalang, et al. have not been sufficiently established and the imposition of administrative liability against them contravenes the basic rules of fair play and justice.

I therefore vote in finding Attys. Nilo T. Divina, Peter Paul S. Maglalang, Winston M. Ginez, Jocelyn "Jo" M. Clemente, Jade Paulo T. Molo, Enrique V. Dela Cruz, Jr., and Jose I. Dela Rama, Jr. NOT GUILTY of Simple Misconduct as defined in Canon II, Section 1 and Section 2 of the Code of Professional Responsibility and Accountability.

[1] Ponencia, pp. 16 and 19.

[2] 888 Phil. 345 (2020) [Per C.J. Peralta, First Division].

[3] Id. at 355, citing BSA Tower Condominium Corporation v. Atty. Reyes, 833 Phil. 588, 594 (2018) [Per J. Peralta, Second Division].

[4] Id.

[5] Id. at 356. (Citations omitted)

[6] Ponencia, p. 15.

[7] Id. at 19.

[8] CODE OF PROF. RESPONSIBILITY AND ACCOUNTABILITY, Canon VI, Sec. 34 (a).

[9] Abulencia v. Hermosisima, 712 Phil. 248, 252 (2013) [Per J. Perlas-Bernabe, Second Division].

[10] Id. citing Dela Cruz v. Zapico, 587 Phil. 435, 445 (2008) [Per J. Leonardo-De Castro, En Banc].

[11] Office of the Court Administrator v. Espejo, 792 Phil. 551, 557 (2016) [Per J. Leonardo-De Castro, First Division], citing Office of Ombudsman-Visayas v. Castro, 759 Phil. 68, 78 (2015) [Per J. Brion, Second Division].

Division]; See also *Civil Service Commission v. Ledesma*, 508 Phil. 569, 579 (2005) [J. Carpio, En Banc].

[12] Ponencia, p. 16.

[13] *Id.* at 18–19.

[14] 833 Phil. 578 (2018) [Per J. Peralta, Second Division].

[15] *Id.* at 586, citing *Jimenez v. Atty. Francisco*, 749 Phil. 551, 565–566 (2014) [Per J. Mendoza, Second Division].

[16] Ponencia, p. 7.

[17] *Id.* at 18.

[18] CODE OF PROF. RESPONSIBILITY AND ACCOUNTABILITY, Canon I, sec. 2.

Section 2. Merit-based Practice. — A lawyer shall rely solely on the merits of a cause and not exert, or give the appearance of, any influence on, nor undermine the authority of, the court, tribunal or other government agency, or its proceedings.

[19] 906 Phil. 1, 13, 19 (2021) [Per Curiam, En Banc].

[20] Ponencia, p. 22. (Emphasis supplied)

[21] Bar Matter No. 4261 In Re: The Proposed Integrated Bar of the Philippines Revised Revised By-Laws, March 8, 2023, art. 1, sec. 3.

[22] Ponencia, p. 23.

[23] *Id.* at 6.

[24] CIVIL CODE, art. 428.

[25] Ponencia, p. 7.

[26] *Martinez v. Martinez*, 1 Phil. 182, 185 (1902) [J. Cooper, First Division].

[27] *Flores-Concepcion v. Castañeda*, 884 Phil. 66, 99 (2020) [Per J. Leonen, En Banc].

[28] Ponencia, p. 4.

[29] *Id.* at 4–5.

[30] 806 Phil. 384 (2017) [Per J. Mendoza, Second Division].

[31] *Id.* at 395.

[32] G.R. No. 254336, November 18, 2021 [Per J. Lazaro-Javier, First Division] at 18. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

[33] *Id.*

[34] *Tan v. Alvarico*, 888 Phil. 345, 355 (2020) [Per C.J. Peralta, First Division], citing *BSA Tower Condominium Corporation v. Atty. Reyes*, 833 Phil. 588, 594 (2018) [Per J. Peralta, Second Division].

[35] Ponencia, p. 24.

[36] *Id.* at 22–23.

[37] 836 Phil. 297 (2018) [Per J. Gesmundo, Third Division].

[38] Id. at 314. (Emphasis supplied)

[39] Id. at 3150–316.

[40] Ponencia, p. 22.

[41] In the Matter of the Inquiry into the 1989 Elections of the Integrated Bar of the Philippines, 258-A Phil. 173, 197 (1989) [Per Curiam, En Banc].

[42] Id.

[43] Dillon v. De Quiroz, 893 Phil. 223, 228 (2021) [Per C.J. Peralta, First Division], citing Cabas v. Atty. Sususco, 787 Phil. 167, 174 (2016) [Per then C.J. Peralta, Third Division].

[44] Id.

DISSENT

LAZARO-JAVIER, J.:

"No good deed goes unpunished." The phrase evokes much cynicism. Alex Evans, a Pastor for the Second Presbyterian Church, in a sermon last March 20, 2022, purposely said that "as we each deal with the evils and uncertainties of life, the seemingly predictable and hopeful statements about good and evil become more acerbic and twisted. Bad things happen to good people. Cynicism creeps in. Hence – our phrase for today – 'no good deed goes unpunished.'"[1]

He even went further—"we live in a complex world - and evil is not always punished, and good is not always rewarded. Sometimes bullies seem to win and good guys, and good intentions, finish last."[2]

The ponencia found Atty. Nilo Divina (Atty. Divina) guilty of Simple Misconduct in violation of Canon II, Sections 1 and 2 of the Code of Professional Responsibility and Accountability (CPRA) and fined him PHP 100,000.00 with stern warning that a repetition of the same or similar offense will be dealt with more severely.[3] This, though Atty. Divina was exculpated from charges of illegal campaigning activities for the election of the Governor of the Integrated Bar of the Philippines (IBP) – Central Luzon Chapter for sponsoring two trips of the IBP – Central Luzon officers. The ponencia characterized the issue in this wise:[4]

The Court is now faced with the difficult task of calibrating the guidelines to determine what constitutes misconduct in light of the peculiar facts of the case. Where does the Court draw the line between reasonable and acceptable generosity and excessive largesse? When is altruism a mere expression of gratitude and when does it teeter dangerously close to influence peddling?

With due respect, I disagree. On this score, I join the eloquent elucidation of my esteemed colleague Associate Justice Ricardo R. Rosario on why penalizing "overgenerosity" is not only problematic, but more important, unsupported by existing Rules.

I expound.

Penalizing "excessive generosity" is problematic and beyond the realm of control

Penalizing the supposed "excessive generosity" of Atty. Divina is problematic on two levels.

First. Punishing generosity goes against tenets of natural law. For as human beings, our very conscience and moral fibers are organically wired to link punishment only to wrongdoings, never for good deeds. It is simply illogical and unreasonable. The problem here is that the ponencia aims to classify too much generosity as a wrong that must be deterred in the legal profession.

But generosity is an unequivocal concept and quality. It is not susceptible to any perverse interpretation which might justify punishment. A person either gives gratuitously or onerously. If the former, it is called "generosity" and the person exhibiting such quality is surely deserving of high praise and regard. If the latter, however, depending on the circumstances, it would be called a fair trade or plain bribery or some other name, but certainly not generosity. For generosity elicits only a sense of goodness and selflessness. It may differ in degree, but the fact that it is a virtue does not change.

Before generosity, then, may be colored and christened another name, context is paramount. In this case, consider this big picture:

Atty. Divina has been giving contributions to the IBP Central Luzon and its various chapters since 2015,[5] even when he was not a member of the IBP Tarlac Chapter. From his own Summary of Schedule of Sponsorships and Donations,[6] he admits contributing a total of PHP 11,394,000.00 from 2012-2023 to the IBP in its entirety. Consider, too, that the traceable inception of his contribution dates at least a decade before rumors of his candidacy in the IBP elections surfaced.

What reason could have motivated him to make donations to various IBP chapters, to which he was not even a member at the time, and over a span of 10 years no less, other than generosity? Is the Court ready to believe that for every contribution made to a specific IBP chapter for the past 10 years, Atty. Divina intended to plant seeds for his eventual possible election as an officer in said chapter? Surely not.

He randomly gave financial aid to various people and institutions over the course of many years, even to persons he did not personally know. On his list of donations,[7] Atty. Divina records donations given to 25 different schools and to 35 other organizations totaling PHP 56,722,672.47 from 2012-2023. Perusing each entry made in his register of donations whose recipients varied in identity and purpose, on what basis do we make the assumption that the contributions made were impelled by motives other than magnanimity? If not magnanimity, then what?

The Anonymous Complaint subject of this case asked the same question vis-à-vis Atty. Divina's sponsorship of the IBP Central Luzon's trips in Balesin resort in 2022 and in Bali, Indonesia in February 2023. Coming up with its own answer, it says, "[t]he answer is very clear, Your Honors. Atty. Divina is engaging in illegal, prohibited and corrupt campaigning in his bid to become IBP Central Luzon Governor, and which he will use as a stepping stone to become IBP National President." [8]

But, is it really clear? Further consider:

Atty. Divina never expressed his intention to run for an IBP position.[9] Rumors and "open secrets" can, by no stretch of imagination, be equated with a formal declaration of intent. Consequently, if he was never a candidate in the first place, what would he have campaigned during the said trips?

On the contrary, there is notably a uniform assertion, save from the Anonymous Complaint, that the Balesin trip and Bali, Indonesia trip were legitimate team-building activities of the IBP Central Luzon. Thus, Atty. Jocelyn Z. Martinez-Clemente (Atty. Clemente), author of My Story, herself stated, "The Balesin trip was a regional team building activity. Aside from the regional officers, there were also chapter officers...to say now that such trip was meant to build patronage for Dean Divina is to undermine the team building purpose of the activity and puts Dean

Divina in a very bad light." [10]

Submitted as evidence, too, are numerous pictures from the team building activities, illustrating how the participants were divided into groups and performed different activities to foster stronger camaraderie among the officers of the IBP. Notably absent were any depictions of the alleged illegal campaigning activities which purportedly transpired during the said events.

Atty. Divina is the Legal Adviser of IBP Central Luzon, hence, an officer thereof. On the other hand, the team-building activities held in Balesin and Bali, Indonesia were precisely for the officers of the IBP Central Luzon. His presence during the said trips, then, obviously is a matter of course.

This is not the first time Atty. Divina sponsored out-of-town and out-of-the-country trips. That he sponsored the IBP Central Luzon's team-building activities in Balesin and Bali, Indonesia is not out of the ordinary. In the past, he also treated the University of Santo Tomas (UST) Faculty of Civil Law, both faculty and bar passers, to trips in the Philippines and abroad including Boracay, Hongkong, United Arab of Emirates, and Taiwan. [11] This year, he treated the 2023 Bar Examinations passers from UST to an all-expense-paid trip to Japan. Applying the logic of the Anonymous Complaint, does it also mean that Atty. Divina had illegal, prohibited, and corrupt motives when he brought the UST Faculty of Civil Law of which he is already the Dean, abroad? If yes, in exchange for his sponsorship, what could he have gained from freshly-minted lawyers who are simply ecstatic to have passed the Bar?

Sans evidence, there is no basis to impute ill-motive on the part of Atty. Divina when he suggested Balesin as the venue for the IBP Central Luzon Chapter's team-building activity during its regional meeting and volunteered to cover the expenses for the same. To be sure, meetings are, most often than not, imbued with spontaneity. Ideas and suggestions flow easily amidst lively exchange in the spur of the moment. The presumption remains to be good faith and regularity in the conduct of our respective businesses. So must this presumption govern in this context, sans evidence to the contrary.

Here, the ponencia itself recognized Atty. Divina's contributions as acts of generosity and nothing more. For they were given with absolutely no strings attached. In fine, they were pure acts of selflessness and gratuity, completely undeserving of punishment.

For another, generosity cannot be measured. No standard exists to measure a person's generosity. When is it too much? Conversely, can generosity ever be too little? The ponencia, for one, did not provide a clear standard on what constitutes "excessive generosity." Although excessiveness is generally defined as "greater than what is usual or proper" or "exceeding the proper or reasonable limit or measure," [12] the ponencia did not cite any guideposts on what is "usual," "proper," or "reasonable" under the circumstances. Neither can such concept be gleaned from the Code of Professional Responsibility and Accountability (CPRA), in any other rule, or even in jurisprudence. It thus begs the question, what is considered "excessive generosity"? For that matter, if the Court is pushed to define this, I could not imagine how the definition would be.

To illustrate, in 2006, self-made multibillionaire John Gokongwei, Jr. donated half of his fortune, about PHP 20 billion, to charity to mark his 80th birthday and his holding company's 50th anniversary. [13] He said: "I will devote the rest of my life to philanthropy. Life has been good to me, and I want to give back the blessings I have received...Others say life begins at 40. I say life is again beginning at 80 for me. And it can only get better." [14]

Picture MacKenzie Scott, ex-wife of Amazon.com CEO Jeff Bezos, saying in her blog post that: "she has practically given away \$4.2Billion of her fortune in the past four months. Scott said she accelerated her charitable donations because of the "wrecking ball" effect of the coronavirus, which she noted has also "substantially

increased the wealth of billionaires." [15] Scott is among those billionaires whose fortunes have soared since the pandemic first crippled the U.S. in March. Her wealth is now valued at more than \$60 Billion, representing a boost of almost \$24 billion since the start of the year, according to the Bloomberg Billionaires Index. [16]

Is it "excessive generosity" when John Gokongwei, Jr. donated 50% of his P40 billion wealth? Did MacKenzie Scott practice "excessive generosity" when she donated about 7% of her total wealth? Is PHP 11,394,000.00 "excessive generosity"?

I respectfully submit, that if the Court must really determine whether generosity is excessive, the capacity of the giver must also be considered. For what is excessive for one, may be perfectly reasonable for another. While PHP 11,394,000.00 is in no way negligible, it may be an amount that Atty. Divina is comfortable parting with if only to express his support to the IBP of which he is a member.

The point is, generosity is a relative altruistic feeling which cannot be compelled, much less regulated. This is a realm beyond our control. Whether a person donated PHP 1.00 or his or her entire fortune, who are we to judge whether that is enough or too much, much less penalize the act? Again, it would be a completely different matter if the person "donates" his or her fortune as part of an immoral, illegal, or unlawful transaction, which is, to reiterate, absolutely not the case here.

Here, we have a lawyer, who believes in the objectives of the IBP. He tried to help by donating about PHP 11,394,000.00 over the course of many years. Yet, unbelievably, we punish him? Undoubtedly, repaying generosity, excessive or otherwise, with retribution will foster cynicism throughout the profession. For in effect, the Court is saying that anyone blessed enough with tremendous magnanimity must be motivated only with self-interest and nothing else. Surely, this is not what the ponencia intends to perpetuate – this cannot be the presumption under which we wish the legal community to operate.

For it creates a situation where lawyers would, for prudence, no longer choose to be generous out of fear of administrative liability. Conversely, the IBP and its officers would no longer be receptive of its members' generosity for fear of appearing to condone impropriety. Ultimately, this situation largely leads to tremendous opportunity loss for the legal community, keeping in mind the resources that could have been shared between its members and the IBP which would have otherwise led to the realization of beneficial programs and projects.

Second, the ponencia, in deterring further acts of gratuity from Atty. Divina, interferes with the latter's right to freely associate with other members of the legal profession. The Constitution itself guarantees each person's right to freedom of association. [17] Sans any showing that the association is for any illegal or immoral purpose, the State and the courts may not unduly intrude into such freedom.

The giving and receiving of assistance, whether monetary or in kind, is intimately related with the right to freely associate guaranteed by the 1987 Constitution. Stated differently, Atty. Divina's act of donating money to the IBP is an exercise of his right to freely associate with and support the other members of the legal profession. On this score, the Court recognizes that the right to freely associate in any organization, association, or group is but one of the many ways by which persons can exercise the right to speak and the right to freely express themselves in order to advance their advocacies, beliefs, and ideas. [18]

Further, in *Roberts v. United States Jaycees*, [19] it was explained:

In one line of decisions, the Court has concluded that choices to enter into and maintain certain intimate human relationships must be secured against undue intrusion by the State because of the role of such relationships in safeguarding the individual freedom that is central to our constitutional scheme. In this respect, freedom of association receives protection as a fundamental element of personal liberty.

Here, the IBP, albeit a "sui generis public institution"[20] comprised of lawyers, still chooses its officers via election—a process that is political in nature. It comes as no surprise, therefore, that candidates vying for an IBP post often hail from differing factions, each with their respective ideals, advocacies, and campaigns. This is not reprehensible, but commendable. For it means like-minded lawyers are bound by common goals, aspirations, and hopes. If they unite themselves together to serve the IBP, this would surely be a laudable feat. And it would completely be within their right to choose their own nominees. How they do so, short of being illegal, unlawful, or immoral, is beyond the power of the Court to interfere with. For that is part and parcel of their constitutionally-guaranteed right to freedom of association.

Relevantly, therefore, Atty. Divina cannot be disallowed from extending his generosity towards the IBP and the other members of legal profession nor barred from associating with them. Lawyers may congregate amongst themselves, discuss their ideas for the IBP, any of its chapters, or for themselves as long as they are not impelled by any illegal purpose.[21]

More so here because there is no substantial evidence that Atty. Divina made donations to the IBP to influence any matter pending before it. The ponencia even made an explicit declaration that Atty. Divina's act of "sponsoring the trip to the Balesin Island Club . . . and Bali, Indonesia of the IBP Central Luzon Officers" was not "relative to any elections in the IBP." [22] Too, the ponencia was not able to point to any other proceeding in which Atty. Divina has any vested interest, and which may be affected by members of the IBP who have benefited from Atty. Divina's generosity. As such, there is simply no basis to say that Atty. Divina's generosity "casts serious doubts as to the IBP's integrity, impartiality, and independence." [23]

The ponencia, in its current iteration, punishes a lawyer who has, thus far, maintained a sterling reputation. Importantly, since his admission to the Philippine Bar, Atty. Divina has not been found guilty of any administrative wrongdoing. Yet the ponencia found it proper to penalize him for unconditionally sharing the fruits of his labor, despite the absence of any evidence regarding his supposedly improper intent.

Notably, Atty. Divina is widely known in the legal community for his distinct generosity. Countless people, outside and inside the IBP, have in the past graciously received his donations, small or otherwise. To be sure, he gives them openly, usually in celebration of some special occasion, as here.

Interestingly, the author of the Anonymous Complaint seems to be himself or herself a recipient of such donations. Even My Story author Atty. Clemente, who now says, "By and large and in hindsight, the dynamics within IBP [Central Luzon]..., leads one to think that every step taken is geared towards the election of Dean Divina as Governor," [24] admitted receiving Christmas gifts and Sodexo gift certificates worth PHP 50,000.00 from Atty. Divina. [25] Yet, at the time, she did not think much of it, precisely because there was nothing out of the ordinary when it comes to Atty. Divina and his natural trait of generosity.

Everything would have been completely different were Atty. Divina reputed otherwise. His sudden change in behavior would have merited not only raised eyebrows but well-grounded suspicion, especially if his sudden generosity timely jived with the election for IBP officers. But this is not the case here.

Nevertheless, for Atty. Divina to be held administratively liable, there must be an act that constitutes an offense. Even then, to be punishable, it must not only be contradictory to existing laws and jurisprudence, it must also be motivated by bad faith, fraud, dishonesty or corruption. [26] For an accusation of bad faith must be proven; it cannot be presumed, and that burden rests on the party who pleads it. [27] As the ponencia wrote, there is no semblance of illegal activities on part of Atty. Divina. Neither did the Anonymous Complaint detail by evidence that his acts were motivated by bad faith, fraud, dishonesty or corruption. It is merely presumption after presumption of malice unfairly directed to him. "Wow, he is giving this much, this means he is up to something

..."

Surely, we cannot acquiesce to this travesty. We cannot condemn a person on bare allegations. Basic is the rule that mere allegation is not evidence and is not equivalent to proof as it is essentially self-serving and devoid of any evidentiary weight.[28]

Despite this history, it is only now that Atty. Divina's contributions are being maligned as part of an allegedly grand political ploy. From the facts, it is apparent that allegations against Atty. Divina began to surface only because of the apprehensions, nay, paranoia that he "wants to become the IBP Central Luzon Governor as a stepping stone to become the IBP National President".[29]

Consequently, his consistent contributions to the IBP were baselessly tagged as part of his "illegal campaign activities" to win over said position. But how can Atty. Divina be engaged in campaign activities, whether legal or illegal, if, in the first place, he never had any intention to vie for any IBP position? It bears reiterating that the ponencia itself acknowledged, "there is no concrete evidence that indeed Atty. Divina has or had any intention of running for Governor of IBP – Central Luzon"[30] and any allegations to such effect were based on hearsay, conjectures, or surmises. Atty. Divina himself assured that "despite the encouragement of his peers and his intention of helping IBP, he could not handle the demands of being an IBP Governor" because of his heavy responsibilities as Dean of the University of Santo Tomas Faculty of Civil law, law professor in various universities and colleges, and as Managing Partner of his law firm.[31]

Clearly, therefore, the very premise on which the entire complaint against Atty. Divina was grounded contains not even an ounce of truth. If at all, the circumstances pieced together make it obvious that Atty. Divina's generosity was cast under a malicious light only to mudsling. The Anonymous Complaint was evidently politically-tainted and the allegations, sans supporting evidence, deserve no credence. It is a mere scrap of paper not worthy of any consideration and from which no consequence ought to spring. Even as a mere incident thereof, why must we find fault in a kind soul who was very clearly politically-targeted by ill-meaning detractors—detractors whose claims must be taken with a grain of salt?

In fine, I humbly submit that the Court should not disincentivize generosity. More important, we should not breathe life into the adage that "no good deed goes unpunished." For in the end, it will be the IBP which will be deprived of the voluntary generosity of its members.

Are we to push and bully a kind soul whose actions, generous at that, is being second-guessed as to his intentions?

Utilitarian philosopher John Stuart Mill stated "Let not any one pacify his conscience by the delusion that he can do no harm if he takes no part, and forms no opinion. Bad men need nothing more to compass their ends, than that good men should look on and do nothing. He is not a good man who, without a protest, allows wrong to be committed in his name, and with the means which he helps to supply, because he will not trouble himself to use his mind on the subject."[32]

While I do believe that "the only thing necessary for the triumph of evil is for good men to do nothing," it is equally true that our society will crumble if good men are not defended, encouraged, and allowed to flourish.

The newly crafted guidelines may not validly apply retroactively

For the first time here and now, the latest iteration of the ponencia provided the following parameters:[33]

Thus, if an individual is willing to contribute, donate or volunteer to further the efforts of the IBP, it must be tempered by the nature and purpose of the activity which in itself should be in furtherance of the goals and objectives of the IBP and for the direct benefit of its members and should not solely be for the interest, use and

enjoyment of the officers of the IBP.

In the present case, Atty. Divina does not deny that he sponsored the trips of the IBP-Central Luzon Officers to Balesin Island Club and to Bali, Indonesia. Atty. Divina characterizes these as acts of generosity to support the IBP and its role in the legal profession. Notably however, these activities sponsored by Atty. Divina were primarily and solely for the benefit of the officers of IBP-Central Luzon. It does not support a particular activity of the IBP for the benefit of its constituent members nor does it further a purpose or objective of the IBP.

Although Atty. Divina claims his intentions in supporting the IBP and its activities are out of generosity, the sponsorship of the trips of the IBP-Central Luzon Officers to Balesin Island Club and to Bali, Indonesia crossed the borders on excessive and overstepped the line of propriety.

With utmost respect, this cannot be done. Albeit the Court is fully empowered to issue guidelines regulating the conduct of members of the legal profession, the same ought to not be applied retroactively, i.e., to acts committed before the existence of this interpretation of rules. This is a basic tenet of fair play equally applicable to administrative cases, especially where what is at stake is no trivial rule but one prescribing a penalty.[34] In such a case, it is imperative that the people affected by this rule be first informed of its existence before being bound thereby.

This is exactly why the presumption is in prospectivity of laws[35] and the Constitution itself prohibits the enactment of ex post facto laws,[36] which *Salvador v. Mapa, Jr.*[37] eloquently defined as follows:

An ex post facto law has been defined as one — (a) which makes an action done before the passing of the law and which was innocent when done criminal, and punishes such action; or (b) which aggravates a crime or makes it greater than it was when committed; or (c) which changes the punishment and inflicts a greater punishment than the law annexed to the crime when it was committed; or (d) which alters the legal rules of evidence and receives less or different testimony than the law required at the time of the commission of the offense in order to convict the defendant. This Court added two (2) more to the list, namely: (e) that which assumes to regulate civil rights and remedies only but in effect imposes a penalty or deprivation of a right which when done was lawful; or (f) that which deprives a person accused of a crime of some lawful protection to which he has become entitled, such as the protection of a former conviction or acquittal, or a proclamation of amnesty.

The constitutional doctrine that outlaws an ex post facto law generally prohibits the retrospectivity of penal laws. Penal laws are those acts of the legislature which prohibit certain acts and establish penalties for their violations; or those that define crimes, treat of their nature, and provide for their punishment. . . .[38] (Citations omitted, Emphases supplied)

Though what the ponencia sought to apply to past acts here are mere guidelines and not a statute, the rationale behind the proscription against ex post facto laws finds equal relevance in this case.

In fact, the CPRA itself provides an exception to its retroactive application, i.e., when to do so would work injustice:

GENERAL PROVISIONS

SECTION 1. Transitory provision. — The CPRA shall be applied to all pending and future cases, except to the extent that in the opinion of the Supreme Court, its retroactive application would not be feasible or would work injustice, in which case the procedure under which the cases were filed shall govern.

In *Dizon v. Trinidad-Radoc*,[39] the Court recognized this rule:

In a Resolution, dated April 11, 2023, the Court En Banc approved the Code of Professional Responsibility and Accountability (CPRA), which became effective on May 29, 2023. Section 1 of its General Provisions provides that the CPRA shall apply "to all pending and future cases, except to the extent that in the opinion of the Supreme Court, its retroactive application would not be feasible or would work injustice, in which case the procedure under which the cases were filed shall govern." The Court finds it apt to apply the CPRA as it would neither be infeasible nor work injustice.[40] (Emphasis supplied; citations omitted)

Injustice means lack of fairness or justice. Respectfully, to render this decision is plain injustice to Atty. Divina. It violates his constitutional right to due process and equal protection of law guaranteed under Section 1, Article III, Bill of Rights of the 1987 Constitution.

It bears stress that before the Court had to reckon with this case, there was no rule against overgenerosity. Overgenerosity was not even a concept then. How was Dean Divina expected to abide by a rule that never existed until now? Corollary to this, it would be the height of injustice to hold him liable and penalize him for failing to follow this guidelines when he did not even know that the same existed.

Clearly, the Court cannot simply create parameters for acts which when done did not exist. Before a transaction otherwise legal can be outlawed or considered administratively punishable, they must fall under the ban of some standards of conduct previously prescribed. Here, as admitted by the ponencia, it is now only "calibrating the guidelines to determine what constitutes misconduct in light of the peculiar facts of the case." Any way we put this, the Court as a whole will be branded as targeting a specific individual without just cause. *Res ipsa loquitur*. The thing speaks for itself. We are making a brand-new rule during the resolution of a particular case to which we seek to apply the same. This is not only objectionable but also downright illegal per se. Justice Cardozo aptly puts it: "Law as a guide to conduct is reduced to the level of mere futility if it is unknown and unknowable." [41]

Time and again, we have emphasized that lawyers must at all times faithfully perform their duties to society, to the bar, to the courts and to their clients. Is this merely a catch-phrase? Here is Atty. Divina supporting the very institution we so hold dear and yet we deal with him unfairly?

As admitted by the ponencia, there was simply no violation or misconduct here. When Atty. Divina made various donations to IBP Central Luzon Chapter, he did so without violating any rule. He lawfully engaged in activities which are not only legal but encouraged by the IBP and the Court as well. To punish him now in the guise of regulating acts but in fact imposes a penalty of fine for acts which when done were lawful is akin to a violation of the prohibition against ex post facto law, whose underlying rationale is honored in Article III, Section 22, Bill of Rights of the 1987 Constitution.

In *Capati v. Atty. Millo*, [42] the Court ordained that actions of a lawyer, if not improper or against the law, does not give rise to any administrative liability. Plain as day, Atty. Divina's actions were neither improper nor against the law. There thus exists no ground to hold him liable, especially not for acts which were lawful when committed.

There being no infraction committed by Atty. Divina, no fault could also be found upon the recipients of his generosity, i.e., Attys. Peter Paul S. Maglalang, Winston M. Ginez, Jocelyn "Jo" M. Clemente, Jade Paulo T. Molo, Enrique V. Dela Cruz, Jr., and Jose I. Dela Rama, Jr.

All told, I vote to ABSOLVE Atty. Nilo Divina and Attys. Peter Paul S. Maglalang, Winston M. Ginez, Jocelyn "Jo" M. Clemente, Jade Paulo T. Molo, Enrique V. Dela Cruz, Jr., and Jose I. Dela Rama, Jr. of any administrative liability.

- [1] <<https://www.2presrichmond.org/sermons/2022/3/21/is-it-true-no-good-deed-goes-unpunished-psalm-37-romans-51-5>> Last accessed on October 18, 2023 at 11:32am.
- [2] Id.
- [3] Ponencia, p. 23.
- [4] Id. at 19.
- [5] Rollo, p. 60.
- [6] Id. at 267–268.
- [7] Id.
- [8] Id. at 1.
- [9] Id. at 255.
- [10] Id. at 3.
- [11] Id. at 128.
- [12] Black's Law Dictionary, p. 670 (4[th] Ed.).
- [13] <<https://www.philstar.com/headlines/2006/08/13/352597/gokongwei-patriarch-leaves-half-fortune-charity>> Last accessed on October 18, 2023 at 11:32am.
- [14] Id.
- [15] <<https://www.cbsnews.com/news/mackenzie-scott-donates-charity-4-2-billion/>> Last accessed on October 18, 2023 at 11:32am.
- [16] Id.
- [17] CONSTITUTION (1987), art. III, sec. 4.
- [18] Calleja v. Executive Secretary, G.R. Nos. 252578, 252579, 252580, 252585, 252613, 252623, 252624, 252646, 252702, 252726, 252733, 252736, 252711, 252747, 252755, 252759, 252765, 252767, 252768, 16663, 252802, 252809, 252903, 252904, 252905, 252916, 252921, 252984, 253018, 253100, 253118, 253124, 253242, 253252, 253254, 254191 & 253420, December 7, 2021 [Per J. Carandang, En Banc].
- [19] 468 U.S. 609.**
- [20] Tabuzo v. Gomos, 836 Phil. 297 (2018) [Per J. Gesmundo, Third Division].
- [21] See CONSTITUTION (1987), art. III, sec. 8.
- [22] Ponencia, p. 16.
- [23] Id., p. 22.
- [24] Rollo, p. 294.
- [25] Id. at 5.
- [26] Rallos v. Judge Gako, Jr., 398 Phil. 60 (2000) [Per J. Panganiban, Third Division].

- [27] International Labour Organization Website
<https://www.ilo.org/dyn/triblex/triblexmain.showList?p_lang=en&p_keyword_id=712> Accessed on February 21, 2024 at 3:30am.
- [28] *Menez v. Status Maritime Corp., et al.*, 839 Phil. 360, 369 (2018) [Per J. Caguioa, Second Division].
- [29] Draft ponencia, p. 1.
- [30] *Id.* at 16.
- [31] *Id.* at 5.
- [32] <https://www.openculture.com/2016/03/edmund-burkeon-in-action.html#google_vignette> Accessed on February 21, 2024 at 9:00am.
- [33] Ponencia, pp. 21–22.
- [34] See *DENREU v. Secretary Abad*, G.R. No. 204512, January 19, 2021 [Per C.J. Peralta, En Banc].
- [35] See CIVIL CODE, art. IV.
- [36] CONSTITUTION (1987), art. III, sec. 22.
- [37] 564 Phil. 31 (2007) [Per J. Nachura, Third Division].
- [38] *Id.* at 44–45.
- [39] A.C. No. 13675, July 11, 2023 [Per Curiam, En Banc].
- [40] *Id.*
- [41] Edgar A. Prichard, *The Ex Post Facto Aspect of Administrative Law*, 7 Wash. & Lee L. Rev. 19 (1950), citing *SEC v. Chenery Corp.*, 332 U. S. 194, 217, 67 S. Ct. 1575, 1763, 91 L. ed. 1995, 2010 (1947). <<https://scholarlycommons.law.wlu.edu/cgi/viewcontent.cgi?article=4040&context=wlulr>> Accessed on April 13, 2024 at 3:58pm.
- [42] A.C. No. 11882, March 14, 2018.

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