Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

FE A. YLAYA,
Complainant,

- versus -

ATTY. GLENN CARLOS GACOTT,
Respondent.

Adm. Case No. 6475

Present:

CARPIO, *J., Chairperson,*
BRION,
DEL CASTILLO,
PEREZ, and
PERLAS-BERNABE, *JJ.*

Promulgated:

JAN 30 2013

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DECISION

BRION, *J.*:

For the Court's consideration is the disbarment complaint[1] filed by Fe A. Ylaya (*complainant*) against Atty. Glenn Carlos Gacott (*respondent*) who allegedly deceived the complainant and her late husband, Laurentino L. Ylaya, into signing a "preparatory" Deed of Sale that the respondent converted into a Deed of Absolute Sale in favor of his relatives.

After the submission of the respondent's comment to the complaint, the Court referred the complaint to the Commission on Bar Discipline of the Integrated Bar of the Philippines (*IBP*) for investigation, evaluation and recommendation.

The complainant alleged that she and her late husband are the registered owners of two (2) parcels of land covered by Transfer Certificate of Title (*TCT*) Nos. 162632 and 162633 located at Barangay Sta. Lourdes,

[1] *Rollo*, pp. 2-6.

Puerto Princesa City. Prior to the acquisition of these properties, TCT No. 162632 (*property*) was already the subject of expropriation proceedings filed by the City Government of Puerto Princesa (*City Government*) on May 23, 1996 against its former registered owner, Cirilo Arellano. The expropriation case was filed with the Regional Trial Court (*RTC*) of Palawan and Puerto Princesa, Branch 95, and was docketed as Civil Case No. 2902. The RTC already fixed the price and issued an order for the City Government to deposit ₱6,000,000.00 as just compensation for the property.[2]

The respondent briefly represented the complainant and her late husband in the expropriation case as intervenors for being the new registered owners of the property. The complainant alleged that the respondent convinced them to sign a "preparatory deed of sale" for the sale of the property, but he left blank the space for the name of the buyer and for the amount of consideration. The respondent further alleged that the deed would be used in the sale to the City Government when the RTC issues the order to transfer the titles.[3] The respondent then fraudulently – without their knowledge and consent, and contrary to their understanding – converted the "preparatory deed of sale" into a Deed of Absolute Sale dated June 4, 2001,[4] selling the subject property to Reynold So and Sylvia Carlos So for ₱200,000.00.[5]

The complainant denied that she and Laurentino were paid the ₱200,000.00 purchase price or that they would sell the property "for such a measly sum" when they stood to get at least ₱6,000,000.00 as just compensation.[6]

The complainant also claimed that the respondent notarized the Deed of Absolute Sale dated June 4, 2001 even though Reynold and Sylvia (his mother's sister) are his uncle and his aunt, respectively.[7]

The respondent denied all the allegations in the complaint.[8]

The respondent argued that the complainant's greed to get the just compensation[9] caused her to file this "baseless, unfounded [and] malicious"

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2 Id. at 2-4, 169.
3 Id. at 3-4.
4 Id. at 4-5; Annexes E and E-1 of the Complaint, id. at 16-17.
5 Id. at 4-5.
6 Id. at 4.
7 Ibid.
8 Id. at 36-41.
9 Id. at 36.

disbarment case.[10] He claimed that the sale was their voluntary transaction and that he "simply ratified the document."[11] He also claimed that Reynold and Laurentino had originally jointly purchased the properties from Cirilo Arellano on July 10, 2000; that they were co-owners for some time; and that Laurentino subsequently sold his share to Reynold under a Deed of Absolute Sale dated June 4, 2001.[12]

The respondent specifically denied asking the complainant and her late husband to execute any "preparatory deed of sale" in favor of the City Government.[13] He also denied that the Deed of Absolute Sale contained blanks when they signed it.[14] That he filed for the spouses Ylaya and Reynold an opposition to the just compensation the RTC fixed proved that there was no agreement to use the document for the expropriation case.[15] He also argued that it was clear from the document that the intended buyer was a natural person, not a juridical person, because there were spaces for the buyer's legal age, marital status, and citizenship,[16] and he was even constrained to file a subsequent Motion to Intervene on behalf of Reynold because the complainant "maliciously retained" the TCTs to the subject properties after borrowing them from his office.[17] Lastly, he denied violating the Rules on Notarial Practice.[18]

On September 4, 2006, the respondent filed a Motion to Resolve or Decide the Case dated August 24, 2006 praying for the early resolution of the complaint.[19]

On December 5, 2006, the complainant filed an *Ex Parte* Motion to Withdraw the Verified Complaint and To Dismiss the Case dated November 14, 2006.[20]

On February 28, 2008, the complainant executed an Affidavit[21] affirming and confirming the existence, genuineness and due execution of the Deed of Absolute Sale notarized on March 6, 2000;[22] the Memorandum

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10 Id. at 40.
11 Id. at 36.
12 Id. at 36-37.
13 Id. at 38.
14 Id. at 38-39.
15 Id. at 38, 40-41.
16 Id. at 38.
17 Id. at 39, 254, 282-288.
18 Id. at 38.
19 Id. at 291-292.
20 Id. at 296-297.
21 Id. at 326-328.
22 Id. at 53-54, 326-328.

of Agreement (*MOA*) dated April 19, 2000;[23] and the Deed of Absolute Sale notarized in 2001.[24] The respondent submitted this Affidavit to the IBP as an attachment to his Motion for Reconsideration of April 21, 2008.[25]

The IBP's Findings

In her Report and Recommendation dated November 19, 2007, IBP Commissioner Anna Caridad Sazon-Dupaya found the respondent administratively liable for violating Canon 1, Rule 1.01 (*A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct*) and Canon 16 ("*A lawyer shall hold in trust all moneys and properties of his client that may come into his possession*) of the Code of Professional Responsibility, and Section 3(c), Rule IV of A.M. No. 02-8-13-SC (2004 Rules on Notarial Practice).[26] She recommended his suspension from the practice of law for a period of six (6) months.[27]

In its Resolution No. XVIII-2007-302[28] dated December 14, 2007, the IBP Board of Governors adopted the IBP Commissioner's finding, but increased the penalty imposed to two (2) years suspension and a warning:

> RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, **with modification**, the Report and Recommendation of the Investigating Commissioner [in] the above-entitled case, herein made part of this Resolution as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering respondent's violations of Canon 1, [Rule] 1.01 and Canon 16 of the Code of Professional Responsibility and Rule IV, Sec. 39(c) of A.M. No. 02-8-13-SC (2004 Rules on Notarial Practice), Atty. Glenn Carlos Gacott is hereby **SUSPENDED** from practice of law for two (2) years with a **Warning** that commission of a similar offense will be dealt with more severely. [emphases supplied]

On May 8, 2008, the respondent filed a Motion for Reconsideration dated April 21, 2008, attaching, among others, a copy of the complainant's Affidavit dated February 27, 2008, admitting the existence, genuineness and due execution of the Deed of Absolute Sale between Cirilo and Laurentino; the MOA between Laurentino and Reynold; the Deed of Absolute Sale between Laurentino and Reynold; and the Compromise Agreement between

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23 Id. at 55-56, 326-328.
24 Id. at 16-17, 326-328.
25 Id. at 313-325, 326-328.
26 Id. at 305-312.
27 Id. at 312.
28 Id. at 303-304.

Reynold and the complainant dated November 14, 2006 for the expropriation case.[29]

On September 4, 2008, the respondent filed a Manifestation with the Supreme Court, requesting that the IBP be directed to resolve his Motion for Reconsideration.[30]

By Resolution No. XIX-2010-545 dated October 8, 2010,[31] the IBP Board of Governors denied the respondent's Motion for Reconsideration for failing to raise any new substantial matter or any cogent reason to warrant a reversal or even a modification of its Resolution No. XVIII-2007-302.[32]

On March 14, 2012, the respondent filed a Petition for Review (*on appeal)* assailing the IBP's findings, as follows:[33]

> a) In conveniently concluding that the Deed of Absolute Sale was pre-signed and fraudulently notarized without requiring Fe Ylaya to adduce evidence in a formal hearing thus, violated the respondent's right to due process as he was not able to cross-examine her. This is not to mention that the complainant failed to offer corroborative proof to prove her bare allegations;
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> b) In sweepingly and arbitrarily disregarded/skirted (sic) the public documents (MOA and 2 other DOAS) duly executed by the parties therein and notarized by the respondent;
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> c) In totally ignoring the complainant's Affidavit admitting the genuineness and due execution of the Deed of Absolute Sale in issue;
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> d) In arbitrarily concluding the absence of co-ownership by Reynold So and Fe Ylaya of the subject lots despite the existence of a notarized MOA clearly showing the co-ownership of Ylaya and So; and
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> e) In finding the respondent/appellant's act of notarizing the DOAS as contrary to the notarial rules[.]

The Issues

From the assigned errors, the complainant poses the following issues:

(1) whether the IBP violated the respondent's right to due process; and

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29 Id. at 313-325.
30 Id. at 416-418.
31 See *rollo*, page number not assigned.
32 Ibid.
33 Ibid; Petition for Review, p. 11.

(2) whether the evidence presented supports a finding that the respondent is administratively liable for violating Canon 1, Rule 1.01 and Canon 16 of the Code of Professional Responsibility, and Section 3(c), Rule IV of A.M. No. 02-8-13-SC.

The Court's Ruling

We set aside the findings and recommendations of the IBP Commissioner and those of the IBP Board of Governors finding the respondent liable for violating Canon 1, Rules 1.01 and Section 3(c), Rule IV of A.M. No. 02-8-13-SC.[34]

We however hold the respondent liable for violating Canon 16 of the Code of Professional Responsibility for being remiss in his obligation to hold in trust his client's properties. We likewise find him liable for violation of (1) Canon 15, Rule 15.03 for representing conflicting interests without the written consent of the represented parties, thus, violating the rule on conflict of interests; and (2) Canon 18, Rule 18.03 for neglecting a legal matter entrusted to him.

a. Due process violation

The most basic tenet of due process is the right to be heard. Denial of due process means the total lack of opportunity to be heard or to have one's day in court. As a rule, no denial of due process takes place where a party has been given an opportunity to be heard and to present his case;[35] what is prohibited **is the absolute lack of opportunity to be heard**.

The respondent claims that the IBP violated his right to due process because he was not given the "amplest opportunity to defend himself, to cross examine the witness [complainant], to object to the admissibility of documents or present controverting evidence"[36] when the IBP rendered its conclusion without requiring the complainant to adduce evidence in a formal hearing and despite the absence of corroborative proof. He insists that these defects rendered the complainant's allegations as hearsay, and the IBP's report, recommendation or resolution null and void.

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[34] *Supra* note 26.

[35] *Alliance of Democratic Free Labor Organization v. Laguesma*, G.R. No. 108625, March 11, 1996, 254 SCRA 565, 574.

[36] See *rollo*, page number not assigned; Petition for Review, p. 14.

Although the respondent failed to have a face-to-face confrontation with the complainant when she failed to appear at the required mandatory conference on October 6, 2005,[37] the records reveal that the respondent fully participated during the entire proceedings and submitted numerous pleadings, including evidence, before the IBP. He was even allowed to file a motion for reconsideration supported by his submitted evidence, which motion the IBP considered and ruled upon in its Resolution No. XIX-2010-545 dated October 8, 2010.[38]

In *Alliance of Democratic Free Labor Organization v. Laguesma*,[39] we held that due process, as applied to administrative proceedings, is the opportunity to explain one's side. In *Samalio v. Court of Appeals*,[40] due process in an administrative context does not require trial-type proceedings similar to those in courts of justice. Where the opportunity to be heard, either through oral arguments or through pleadings, is accorded, no denial of procedural due process takes place. The requirements of due process are satisfied where the parties are afforded a fair and reasonable opportunity to explain their side of the controversy at hand.

Similarly, in *A.Z. Arnaiz Realty, Inc. v. Office of the President*,[41] we held that "[d]ue process, as a constitutional precept, does not always, and in all situations, require a trial-type proceeding. Litigants may be heard through pleadings, written explanations, position papers, memoranda or oral arguments. The standard of due process that must be met in administrative tribunals allows a certain degree of latitude[, provided that] fairness is not ignored. It is, therefore, not legally objectionable for being violative of due process, for an administrative agency to resolve a case based solely on position papers, affidavits or documentary evidence submitted by the parties."[42]

In this case, the respondent's failure to cross-examine the complainant is not a sufficient ground to support the claim that he had not been afforded due process. The respondent was heard through his pleadings, his submission of alleged controverting evidence, and his oral testimony during the October 6, 2005 mandatory conference. These pleadings, evidence and testimony were received and considered by the IBP Commissioner when she

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37 *Rollo*, pp. 254- 290; TSN of Mandatory Conference, October 6, 2005.
38 *Supra* note 31.
39 *Supra* note 35, at 574.
40 G.R. No. 140079, March 31, 2005, 454 SCRA 462, 473.
41 G.R. No. 170623, July 7, 2010, 624 SCRA 494.
42 Id. at 502.

arrived at her findings and recommendation, and were the bases for the IBP Board's Resolution.

Moreover, "any seeming defect in the observance [of due process] is cured by the filing of a motion for reconsideration. **[A] [d]enial of due process cannot be successfully invoked by a party who has had the opportunity to be heard on his motion for reconsideration.** Undoubtedly [in this case], the requirement of the law was afforded to [the] respondent."[43]

We also note that the respondent, on a Motion to Resolve or Decide the Case dated August 24, 2006, submitted his case to the IBP for its resolution *without any further hearings*. The motion, filed almost one year after the mandatory conference on October 6, 2005, significantly did not contain any statement regarding a denial of due process. In effect, the respondent *himself* waived his cross-examination of the complainant when he asked the IBP Board of Governors to resolve the case based on the pleadings and the evidence on record. To quote his own submission:

> 1. On June 30, 2004[,] *a complaint* was filed in this case;
> 2. On October 19, 2004[,] the respondent filed his *comment* with all its attachments denying all the allegations in the complaint;
> 3. On June 23, 2005[,] the respondent filed his *position paper*. On April 28, 2006[,] the respondent also filed his *supplemental position paper*. By contrast, up to this date, the complainant/petitioner has not filed her verified position paper thus, waived her right to file the same;
> 4. There being no other genuine issues to be heard in this case as all the defenses and counter-arguments are supported by documentary evidence, it is most respectfully prayed that the instant case be resolved on its merits or be ordered dismissed for lack of merit without further hearing;
> 5. Further, considering that there is an on-going case in Branch 52 of the Regional Trial Court of Palawan in Civil Case No. 2902 for Expropriation involving the same property, and such fact was deliberately omitted by the complainant in her Verified Complaint as shown in the certification of non-forum shopping, the outright dismissal of this case is warranted, hence, this motion; and
> 6. This is meant to expedite the termination of this case.[44] (underscore ours; italics supplied)

Finally, we note Section 11, Rule 139-B of the Rules of Court which provides that:

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[43] Id. at 503.

[44] *Supra* note 19.

> No defect in a complaint, notice, answer, or in the proceeding or the Investigator's Report shall be considered as substantial unless the Board of Governors, upon considering the whole record, finds that such defect has resulted or may result in a miscarriage of justice, in which event the Board shall take such remedial action as the circumstances may warrant, including invalidation of the entire proceedings.

In this case, the IBP Commissioner's findings were twice reviewed by the IBP Board of Governors – the first review resulted in Resolution No. XVIII-2007-302[45] dated December 14, 2007, affirming the IBP Commissioner's findings, but modifying the penalty; the second review resulted in Resolution No. XIX-2010-545 dated October 8, 2010,[46] denying the respondent's motion for reconsideration. In both instances, the IBP Board of Governors found no defect or miscarriage of justice warranting a remedial action or the invalidation of the proceedings.

We emphasize that disciplinary proceedings against lawyers are *sui generis* in that they are neither purely civil nor purely criminal; they involve investigations by the Court into the conduct of one of its officers,[47] not the trial of an action or a suit.

> Disciplinary proceedings against lawyers are *sui generis*. Neither purely civil nor purely criminal, they do not involve a trial of an action or a suit, but is rather an investigation by the Court into the conduct of one of its officers. Not being intended to inflict punishment, it is in no sense a criminal prosecution. Accordingly, there is neither a plaintiff nor a prosecutor therein**.** It may be initiated by the Court *motu proprio*. Public interest is its primary objective, and the real question for determination is whether or not the attorney is still a fit person to be allowed the privileges as such. Hence, in the exercise of its disciplinary powers, the Court merely calls upon a member of the Bar to account for his actuations as an officer of the Court with the end in view of preserving the purity of the legal profession and the proper and honest administration of justice by purging the profession of members who by their misconduct have proved themselves no longer worthy to be entrusted with the duties and responsibilities pertaining to the office of an attorney. In such posture, there can thus be no occasion to speak of a complainant or a prosecutor. [emphases deleted]

The complainant in disbarment cases is not a direct party to the case but a witness who brought the matter to the attention of the Court.[48] Flowing from its *sui generis* character, it is not mandatory to have a formal hearing in which the complainant must adduce evidence.

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45 *Supra* note 28.
46 *Supra* note 31.
47 *Pena v. Aparicio,* A.C. No. 7298, June 25, 2007, 525 SCRA 444, 453.
48 *Garrido v. Garrido,* A.C. No. 6593, February 4, 2010, 611 SCRA 508, 516.

From all these, we find it clear that the complainant is not indispensable to the disciplinary proceedings and her failure to appear for cross-examination or to provide corroborative evidence of her allegations is of no merit. What is important is whether, upon due investigation, the IBP Board of Governors finds sufficient evidence of the respondent's misconduct to warrant the exercise of its disciplinary powers.

b. Merits of the Complaint

"In administrative cases against lawyers, the quantum of proof required is preponderance of evidence which the complainant has the burden to discharge."[49] Preponderance of evidence means that the evidence adduced by one side is, as a whole, superior to or has a greater weight than that of the other. It means evidence which is more convincing to the court as worthy of belief compared to the presented contrary evidence.

Under Section 1, Rule 133 of the Rules of Court, in determining whether preponderance of evidence exists, the court may consider the following: (a) all the facts and circumstances of the case; (b) the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, and the probability or improbability of their testimony; (c) the witnesses' interest or want of interest, and also their personal credibility so far as the same may ultimately appear in the trial; and (d) the number of witnesses, although it does not mean that preponderance is necessarily with the greater number.[50] By law, a lawyer enjoys the legal presumption that he is innocent of the charges against him until the contrary is proven, and that as an officer of the court, he is presumed to have performed his duties in accordance with his oath.[51]

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[49] *Solidon v. Macalalad,* A.C. No. 8158, February 24, 2010, 613 SCRA 472, 476.

[50] *Aba v. De Guzman, Jr.*, A.C. No. 7649, December 14, 2011, 662 SCRA 361, 371.

[51] Id. at 371, citing *In Re: De Guzman,* 154 Phil. 127 (1974); *De Guzman v. Tadeo,* 68 Phil. 554 (1939); *In Re: Tiongko,* 43 Phil. 191 (1922); and *Acosta v. Serrano,* 166 Phil. 257 (1977).

The IBP Commissioner set out her findings as follows:

> The undersigned, after a careful evaluation of the evidence presented by both parties, finds that the charges of the complainant against the respondent are worthy of belief based on the following:
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> First, the allegation of the respondent that Reynold So was actually co-owner of spouses Ylanas (sic) in the properties subject of the Deed of Sale between Felix Arellano and Spouses Ylanas (sic) is hard to believe despite the presentation of the Memorandum of Agreement.
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> It is elementary in Rules of Evidence that when the contents of a written document are put in issue, the best evidence would be the document itself. In the Deed of Sale between Felix Arellano and Spouses Ylanas (sic), the buyer of the subject properties is only Laurentino L. Ylaya married to Fe A. Ylaya. The document does not state that Reynold So was likewise a buyer together with Laurentino Ylaya, or that the former paid half of the purchase price.
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> Also, it is hard for this Commission to believe that Reynold So, assisted by a lawyer at that and who allegedly paid half of the purchase price, would not insist for the inclusion of his name in the Deed of Sale as well as the Transfer Certificate of Title subsequently issued.
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> The Memorandum of Agreement between [the] spouses Ylaya and Reynold So produced by the respondent [cannot] overturn the belief of this Commission considering that the Memorandum of Agreement was executed more than a month AFTER the Deed of Sale between Felix Arellano and the Ylayas was notarized. This is not to mention the fact that the complainant denied ever having executed the Memorandum of Agreement. A close examination of the signatories in the said Memorandum of Agreement would reveal that indeed, the alleged signatures of the complainant and her husband are not the same with their signatures in other documents.
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> Assuming, for the sake of argument, that the Memorandum of Agreement is valid, thereby making Laurentino Ylaya and co-owner Reynold So co-owners of the subject properties (Please see Annex "B" of respondent's Comment), this Commission finds it hard to believe Laurentino Ylaya would sell it to Reynold So for ₱200,000 x x x when his minimum expenses for the purchase thereof is already ₱225,000.00 and he was expecting to receive ₱7,000,000.00, more or less. That would mean that if Reynold So and the complainant were co-owners, the ₱7,000,000.00 would then be equally divided among them at ₱3,500,000.00 each, far above the ₱200,000.00 selling price reflected in the pre-signed Deed of Sale.

> As to the second issue, this Commission believes that the respondent committed serious error in notarizing the Deed of Sale and the Memorandum of Agreement between his uncle Reynold So and Laurentino Ylaya based on Rule IV, Section 3 (c) of A.M. No. 02-8-13-SC which provides as follows:
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> > "Sec. 3. Disqualifications – a notary public is disqualified from performing a notarial act if he:
> >
> > (a) x x x.
> >
> > (b) x x x.
> >
> > (c) is a spouse, common-law partner, ancestor, descendant, or relative by affinity or consanguinity of the principal within the fourth civil degree."
>
> The defense therefore of the respondent that he did not violate the aforementioned Rule because his uncle Reynold So, the buyer is not the principal in the Subject Deed of Sale but the seller Laurentino Ylaya (please see page 3 of the respondent's Supplemental Position Paper) is misplaced. Clearly[,] both the buyer and the seller in the instant case are considered principals in the contract entered into.
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> Furthermore, if we are to consider the argument of the respondent that his uncle was not a principal so as to apply the afore-quoted provision of the Rules, the respondent still violated the Rules when he notarized the subject Memorandum of Agreement between Laurentino Ylaya and his uncle Reynold So. Clearly, both complainant and Reynold So were principal parties in the said Memorandum of Agreement.[52]

The respondent argues that the IBP Commissioner's findings are contrary to the presented evidence, specifically to the MOA executed by Laurentino and Reynold acknowledging the existence of a co-ownership;[53] to the complainant's *Ex Parte* Motion to Withdraw the Verified Complaint and To Dismiss the Case dated November 14, 2006 where she stated that the parties have entered into a compromise agreement in Civil Case No. 2902, and that the disbarment complaint arose from a misunderstanding, miscommunication and improper appreciation of facts;[54] to her Affidavit dated February 27, 2008[55] affirming and confirming the existence, genuineness and due execution of the Deed of Absolute Sale notarized on March 6, 2000;[56] and to the Deed of Absolute Sale notarized in 2001.[57]

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52 *Rollo*, pp. 310-311.
53 Id. at 55-56.
54 Id. at 296-297.
55 Id. at 326-328.
56 Id. at 53-54, 326-328.
57 Id. at 16-17, 326-328.

In all, the respondent claims that these cited pieces of evidence prove that this administrative complaint against him is fabricated, false and untrue. He also points to Atty. Robert Peneyra, the complainant's counsel in this administrative case, as the hand behind the complaint.[58] According to the respondent, Atty. Peneyra harbors ill-will against him and his family after his father filed several administrative cases against Atty. Peneyra, one of which resulted in the imposition of a warning and a reprimand on Atty. Peneyra.[59]

Reynold, in his Affidavit dated October 11, 2004, confirms that there was a co-ownership between him and Laurentino; that Laurentino decided to sell his half of the property to Reynold because he (Laurentino) had been sickly and in dire need of money to pay for his medical bills; that Laurentino agreed to the price of ₱200,000.00 as this was almost the same value of his investment when he and Reynold jointly acquired the property; and that the sale to Reynold was with the agreement and consent of the complainant who voluntarily signed the Deed of Sale.[60]

After examining the whole record of the case, we agree with the respondent and find the evidence insufficient to prove the charge that he violated Canon 1, Rule 1.01 of the Code of Professional Responsibility and Section 3(c), Rule IV of A.M. No. 02-8-13-SC. Specifically, (1) the evidence against the respondent fails to show the alleged fraudulent and deceitful acts he has taken to mislead the complainant and her husband into signing a "preparatory deed of sale" and the conversion into a Deed of Absolute Sale dated June 4, 2001 in favor of Reynold; and (2) no prohibition exists against the notarization of a document in which any of the parties interested is the notary's relative within the 4th civil degree, by affinity or consanguinity, at that time the respondent notarized the documents.

In her Report and Recommendation,[61] the IBP Commissioner concluded that the respondent is liable for deceit and fraud because he failed to prove the existence of a co-ownership between Laurentino and Reynold; in her opinion, the signatures of the complainant and of her husband on the MOA "are not the same with their signatures in other documents."[62]

We do not agree with this finding. While the facts of this case may raise some questions regarding the respondent's legal practice, we nevertheless found nothing constituting clear evidence of the respondent's

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58 Id. at 254-290; see TSN of Mandatory Conference, October 6, 2005.
59 Id. at 416-417; see Respondent's Manifestation dated August 26, 2008.
60 Id. at 44, 47-48.
61 Id. at 310-311.
62 Id. at 311.

specific acts of fraud and deceit. His failure to prove the existence of a co-ownership does not lead us to the conclusion that the MOA and the Deed of Absolute Sale dated June 4, 2001 are spurious and that the respondent was responsible for creating these spurious documents. We are further persuaded, after noting that in disregarding the MOA, the IBP Commissioner failed to specify what differences she observed in the spouses Ylaya's signatures in the MOA and what documents were used in comparison.

Apart from her allegations, the complainant's pieces of evidence consist of TCT Nos. 162632 and 162633;[63] her Motion for Leave to Intervene in Civil Case No. 2902 dated May 17, 2000;[64] the RTC order in Civil Case No. 2902 dated November 6, 2000 fixing the price of just compensation;[65] the Deed of Absolute Sale dated June 4, 2001;[66] the spouses Ylaya's Verified Manifestation dated September 2, 2002, filed with the RTC in Civil Case No. 2902, assailing the Motion to Deposit Just Compensation filed by the respondent on behalf of Reynold and manifesting the sale between Laurentino and Reynold;[67] the Provincial Prosecutor's Subpoena to the complainant in connection with the respondent's complaint for libel;[68] the respondent's complaint for libel against the complainant dated August 27, 2003;[69] the complainant's Counter Affidavit dated March 26, 2004 against the charge of libel;[70] and the respondent's letter to the Provincial Attorney of Palawan dated April 5, 2004, requesting for "official information regarding the actual attendance of Atty. ROBERT Y. PENEYRA" at an MCLE seminar.[71]

We do not see these documentary pieces of evidence as proof of specific acts constituting deceit or fraud on the respondent's part. The documents by themselves are neutral and, at the most, show the breakdown of the attorney-client relationship between the respondent and the complainant. It is one thing to allege deceit and misconduct, and it is another to demonstrate by evidence the specific acts constituting these allegations.[72]

We reiterate that in disbarment proceedings, the burden of proof is on the complainant; the Court exercises its disciplinary power only if the complainant establishes her case by clear, convincing, and satisfactory

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63 Id. at 8-12.
64 Id. at 12-13.
65 Id. at 14-15.
66 Id. at 16-17.
67 Id. at 18-20.
68 Id. at 21.
69 Id. at 22-24.
70 Id. at 25-31.
71 Id. at 32.
72 *Arienda v. Aguila*, A.C. No. 5637, April 12, 2005, 455 SCRA 282, 286-287.

evidence.[73] Preponderance of evidence means that the evidence adduced by one side is, as a whole, superior to or has a greater weight than that of the other party. When the pieces of evidence of the parties are evenly balanced or when doubt exists on the preponderance of evidence, the equipoise rule dictates that the decision be *against* the party carrying the burden of proof.[74]

In this case, we find that the complainant's evidence and the records of the case do not show the respondent's deliberate fraudulent and deceitful acts. In the absence of such proof, the complaint for fraud and deceit under Canon 1, Rule 1.01 of the Code of Professional Responsibility must perforce be dismissed.

We note that the respondent has not squarely addressed the issue of his relationship with Reynold, whom the complainant alleges to be the respondent's uncle because Reynold is married to the respondent's maternal aunt.[75] However, this is of no moment as the respondent cannot be held liable for violating Section 3(c), Rule IV of A.M. No. 02-8-13-SC because the Deed of Absolute Sale dated June 4, 2001[76] and the MOA dated April 19, 2000[77] were notarized by the respondent prior to the effectivity of A.M. No. 02-8-13-SC on July 6, 2004. The notarial law in force in the years 2000 - 2001 was Chapter 11 of Act No. 2711 (the Revised Administrative Code of 1917) which did not contain the present prohibition against notarizing documents where the parties are related to the notary public within the 4th civil degree, by affinity or consanguinity. Thus, we must likewise dismiss the charge for violation of A.M. No. 02-8-13-SC.

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73 Id. at 287.
74 *Aba v. De Guzman, Jr., supra* note 50, at 372.
75 Id. at 89-90, 242.
76 Id. at 16-17.
77 Id. at 55-56.

c. Liability under Canons 15, 16 and 18

We find the respondent liable under *Canon 15, Rule 15.03* for representing conflicting interests without the written consent of all concerned, particularly the complainant; under *Canon 16* for being remiss in his obligation to hold in trust his client's properties; and under *Canon 18, Rule 18.03* for neglecting a legal matter entrusted to him.

Canon 15, Rule 15.03 states:

> A lawyer shall not represent conflicting interests **except** by written consent of all concerned given after a full disclosure of the facts. [emphasis ours]

The relationship between a lawyer and his client should ideally be imbued with the highest level of trust and confidence. Necessity and public interest require that this be so. Part of the lawyer's duty to his client is to avoid representing conflicting interests. He is duty bound to decline professional employment, no matter how attractive the fee offered may be, if its acceptance involves a violation of the proscription against conflict of interest, or any of the rules of professional conduct. Thus, a lawyer may not accept a retainer from a defendant after he has given professional advice to the plaintiff concerning his claim; nor can he accept employment from another in a matter adversely affecting any interest of his former client. It is his duty to decline employment in any of these and similar circumstances in view of the rule prohibiting representation of conflicting interests.[78]

The proscription against representation of conflicting interest applies "even if the lawyer would not be called upon to contend for one client that which the lawyer has to oppose for the other, or that there would be no occasion to use the confidential information acquired from one to the disadvantage of the other as the two actions are wholly unrelated."[79] The sole exception is provided in Canon 15, Rule 15.03 of the Code of Professional Responsibility – **if there is a written consent from all the parties after full disclosure**.

Based on the records, we find substantial evidence to hold the respondent liable for violating Canon 15, Rule 15.03 of the Code of Professional Responsibility. The facts of this case show that the respondent

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78 Ruben E. Agpalo, Legal Ethics (1989), p. 150.

79 *Josefina M. Aniñon v. Atty. Clemencio Sabitsana, Jr.*, A.C. No. 5098, April 11, 2012.

retained clients who had close dealings with each other. The respondent admits to acting as legal counsel for Cirilo Arellano, the spouses Ylaya and Reynold at one point during the proceedings in Civil Case No. 2902.[80] Subsequently, he represented only Reynold in the same proceedings,[81] asserting Reynold's ownership over the property against all other claims, including that of the spouses Ylaya.[82]

We find no record of any written consent from any of the parties involved and we cannot give the respondent the benefit of the doubt in this regard. We find it clear from the facts of this case that the respondent retained Reynold as his client and actively opposed the interests of his former client, the complainant. He thus violated Canon 15, Rule 15.03 of the Code of Professional Responsibility.

We affirm the IBP Commissioner's finding that the respondent violated Canon 16. The respondent admits to losing certificates of land titles that were entrusted to his care by Reynold.[83] According to the respondent, the complainant "maliciously retained" the TCTs over the properties sold by Laurentino to Reynold after she borrowed them from his office.[84] Reynold confirms that the TCTs were taken by the complainant from the respondent's law office.[85]

The respondent is reminded that his duty under Canon 16 is to "hold in trust all moneys and properties of his client that may come into his possession." Allowing a party to take the original TCTs of properties owned by another – an act that could result in damage – should merit a finding of legal malpractice. While we note that it was his legal staff who allowed the complainant to borrow the TCTs and it does not appear that the respondent was aware or present when the complainant borrowed the TCTs,[86] we nevertheless hold the respondent liable, as the TCTs were entrusted to his care and custody; he failed to exercise due diligence in caring for his client's properties that were in his custody.

We likewise find the respondent liable for violating Canon 18, Rule 18.03 for neglecting a legal matter entrusted to him. Despite the respondent's admission that he represented the complainant and her late

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80 *Rollo*, pp. 254, 282-285, 349-351; see TSN of Mandatory Conference, October 6, 2005; RTC Decision dated October 4, 2006 in Civil Case No. 2902.

81 *Rollo*, pp. 254, 282-285, 349-351; see TSN of Mandatory Conference, October 6, 2005, RTC Decision dated October 4, 2006 in Civil Case No. 2902.

82 Id. at 349-351; see RTC Decision dated October 4, 2006 in Civil Case No. 2902.

83 Id. at 282-285, 288.

84 Id. at 39.

85 Id. at 48; see Reynold's Affidavit dated October 11, 2004.

86 Id. at 287-288; see TSN of Mandatory Conference, October 6, 2006.

husband in Civil Case No. 2902 and that he purportedly filed a Motion for Leave to Intervene in their behalf, the records show that he never filed such a motion for the spouses Ylaya. The complainant herself states that she and her late husband were forced to file the Motion for Leave to Intervene on their own behalf. The records of the case, which include the Motion for Leave to Intervene filed by the spouses Ylaya, support this conclusion.[87]

Canon 18, Rule 18.03 requires that a lawyer "shall not neglect a legal matter entrusted to him, and his negligence in connection [therewith] shall render him liable." What amounts to carelessness or negligence in a lawyer's discharge of his duty to his client is incapable of an exact formulation, but the Court has consistently held that the mere failure of a lawyer to perform the obligations due his client is *per se* a violation.[88]

In *Canoy v. Ortiz,*[89] we held that a lawyer's failure to file a position paper was *per se* a violation of Rule 18.03 of the Code of Professional Responsibility. Similar to *Canoy*, the respondent clearly failed in this case in his duty to his client when, without any explanation, he failed to file the Motion for Leave to Intervene on behalf of the spouses Ylaya. Under the circumstances, we find that there was want of diligence; without sufficient justification, this is sufficient to hold the respondent liable for violating Canon 18, Rule 18.03 of the Code of Professional Responsibility.

d. The Complainant's Ex Parte Motion to Withdraw the Verified Complaint and to Dismiss the Case and her Affidavit

We are aware of the complainant's *Ex Parte* Motion to Withdraw the Verified Complaint and To Dismiss the Case dated November 14, 2006[90] and her Affidavit[91] affirming and confirming the existence, genuineness and due execution of the Deed of Absolute Sale notarized on March 6, 2000.[92] The complainant explains that the parties have entered into a compromise agreement in Civil Case No. 2902, and that this disbarment complaint was filed because of a "misunderstanding, miscommunication and improper appreciation of facts";[93] she erroneously accused the respondent of ill motives and bad intentions, but after being enlightened, she is convinced that

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87 Id. at 169, 185, 191, 282 -285, 288, 349-351; see Complainant's Position Paper, TSN of Mandatory Conference on October 6, 2005, Opposition (to the Order dated November 6, 2000) and Motion to Inhibit in Civil Case No. 2902, and the RTC Decision dated October 4, 2006 in Civil Case No. 2902.

88 *Solidon v. Macalalad*, *supra* note 49, at 476.

89 Adm. Case No. 5458, March 16, 2005, 453 SCRA 410, 418-419.

90 *Supra* note 20.

91 *Supra* note 21.

92 *Rollo*, pp. 53-54, 326-328; the Deed of Sale is dated January 28, 2000.

93 Id. at 296.

he has no personal or pecuniary interests over the properties in Civil Case No. 2902; that such misunderstanding was due to her unfamiliarity with the transactions of her late husband during his lifetime.[94] The complainant now pleads for the respondent's forgiveness, stating that he has been her and her late husband's lawyer for over a decade and affirms her trust and confidence in him.[95] We take note that under their Compromise Agreement dated November 14, 2006 for the expropriation case,[96] the complainant and Reynold equally share the just compensation, which have since increased to ₱10,000,000.00.

While the submitted *Ex Parte* Motion to Withdraw the Verified Complaint and to Dismiss the Case and the Affidavit appear to exonerate the respondent, complete exoneration is not the necessary legal effect as the submitted motion and affidavit are immaterial for purposes of the present proceedings. Section 5, Rule 139-B of the Rules of Court states that, "No investigation shall be interrupted or terminated by reason of the desistance, settlement, compromise, restitution, withdrawal of charges, or failure of the complainant to prosecute the same."

In *Angalan v. Delante*,[97] despite the Affidavit of Desistance, we disbarred the respondent therein for taking advantage of his clients and for transferring the title of their property to his name. In *Bautista v. Bernabe*,[98] we revoked the lawyer's notarial commission, disqualified him from reappointment as a notary public for two years, and suspended him from the practice of law for one year for notarizing a document without requiring the affiant to personally appear before him. In this cited case, we said:

> Complainant's desistance or withdrawal of the complaint does not exonerate respondent or put an end to the administrative proceedings. A case of suspension or disbarment may proceed regardless of interest or lack of interest of the complainant. What matters is whether, on the basis of the facts borne out by the record, the charge of deceit and grossly immoral conduct has been proven. This rule is premised on the nature of disciplinary proceedings. A proceeding for suspension or disbarment is not a civil action where the complainant is a plaintiff and the respondent lawyer is a defendant. Disciplinary proceedings involve no private interest and afford no redress for private grievance. They are undertaken and prosecuted solely for the public welfare. They are undertaken for the purpose of preserving courts of justice from the official ministration of persons unfit to practice in them. The attorney is called to answer to the court for his conduct as an officer of the court. The complainant or the

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94 Ibid.
95 Ibid.
96 Id. at 313-360.
97 A.C. No. 7181, February 6, 2009, 578 SCRA 113, 128.
98 A.C. No. 6963, February 9, 2006, 482 SCRA 1.

> person who called the attention of the court to the attorney's alleged misconduct is in no sense a party, and has generally no interest in the outcome except as all good citizens may have in the proper administration of justice.[99]

In sum, in administrative proceedings against lawyers, the complainant's desistance or withdrawal does not terminate the proceedings. This is particularly true in the present case where pecuniary consideration has been given to the complainant as a consideration for her desistance. We note in this regard that she would receive ₱5,000,000.00, or half of the just compensation under the Compromise Agreement,[100] and thus agreed to withdraw all charges against the respondent.[101] From this perspective, we consider the complainant's desistance to be suspect; it is not grounded on the fact that the respondent did not commit any actual misconduct; rather, because of the consideration, the complainant is now amenable to the position of the respondent and/or Reynold.

e. Procedural aspect

We remind all parties that resolutions from the IBP Board of Governors are merely recommendatory and do not attain finality without a final action from this Court. Section 12, Rule 139-B is clear on this point that:

> Section 12. Review and decision by the Board of Governors. –
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> x x x x
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> (b) If the Board, by the vote of a majority of its total membership, determines that the respondent should be suspended from the practice of law or disbarred, it shall issue **a resolution setting forth its findings and recommendations which, together with the whole record of the case, shall forthwith be transmitted to the Supreme Court for final action**.

The Supreme Court exercises exclusive jurisdiction to regulate the practice of law.[102] It exercises such disciplinary functions through the IBP, but it does not relinquish its duty to form its own judgment. Disbarment proceedings are exercised under the sole jurisdiction of the Supreme Court, and the IBP's recommendations imposing the penalty of suspension from the practice of law or disbarment are always subject to this Court's review and approval.

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99 Id. at 8.
100 *Rollo*, pp. 327, 331.
101 Id. at 332.
102 CONSTITUTION, Article VIII, Section 5.

The Penalty

In *Solidon v. Macalalad*,[103] we imposed the penalty of suspension of six (6) months from the practice of law on the respondent therein for his violation of Canon 18, Rule 18.03 and Canon 16, Rule 16.01 of the Code of Professional Responsibility. In *Josefina M. Aniñon v. Atty. Clemencio Sabitsana, Jr.*,[104] we suspended the respondent therein from the practice of law for one (1) year, for violating Canon 15, Rule 15.03 of the Code of Professional Responsibility. Under the circumstances, we find a one (1) year suspension to be a sufficient and appropriate sanction against the respondent.

WHEREFORE, premises considered, we set aside Resolution No. XVIII-2007-302 dated December 14, 2007 and Resolution No. XIX-2010-545 dated October 8, 2010 of the IBP Board of Governors, and find respondent Atty. Glenn Carlos Gacott **GUILTY** of violating Rule 15.03 of Canon 15, Canon 16, and Rule 18.03 of Canon 18 of the Code of Professional Responsibility. As a penalty, he is **SUSPENDED** from the practice of law for one (1) year, with a **WARNING** that a repetition of the same or similar act will be dealt with more severely.

SO ORDERED.

ARTURO D. BRION
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

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103 *Supra* note 49, at 480.
104 *Supra* note 79.

MARIANO C. DEL CASTILLO
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice