REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

N O T I C E

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **July 6, 2022** *which reads as follows*:

"A.C. No. 13352 [Formerly CBD Case No. 16-4864] (Anna Zenaida A. Unte and Noraida S. Casan, *complainants v.* **Atty. Edgar A. Masorong,** *respondent*). — This administrative case arose from an Administrative Complaint[1] filed by complainants Anna Zenaida A. Unte and Noraida S. Casan (complainants) against respondent Atty. Edgar A. Masorong (respondent), alleging that he, in his capacity as private prosecutor in criminal cases pending before the Regional Trial Court of Marawi City, Lanao del Sur, Branch 8 (RTC), committed legal malpractice in filing a motion in these cases without the conformity and approval of the public prosecutor.

The Facts

Complainants were the accused in two criminal cases for violation of Republic Act No. (RA) 3019[2] or the "Anti-Graft and Corrupt Practices Act" before the RTC. In these two cases, respondent acted as the private prosecutor representing the private complainants therein who filed the criminal complaints accusing herein complainants of withholding their salaries without any justifiable reason or without having the authority to do so.[3]

On May 13, 2015, complainants moved to quash the criminal Informations alleging that the prosecutor who filed them before the RTC did not have authority to file the same.[4] Subsequently or on May 18, 2015, public prosecutor Atty. Ating D. Diacat (public prosecutor) filed a motion to withdraw the criminal informations alleging that the Marawi City Prosecution Office did not have the authority to file the same pursuant to an agreement between the Department of Justice and the Office of the Ombudsman. The motion having been denied, the public prosecutor thus sought its reconsideration on June 8, 2015.[5]

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1 *Rollo*, pp. 1-13.
2 Approved on August 17, 1960.
3 *Rollo*, pp. 32-35.
4 Id. at 46-53.
5 Id. at 56-64.

On July 19, 2015, respondent, as private prosecutor, filed an Urgent Motion to Place Accused under Preventive Suspension. [6] In response, complainants sought to disqualify respondent as private prosecutor alleging that the latter was without authority from the Chief of the Prosecution Office or the Regional State Prosecution to file the said motion pursuant to Section 5, Rule 110 of the Rules of Court.[7]

In an Order[8] dated October 20, 2015, the RTC dismissed the motion to quash and ordered for complainants' preventive suspension upon ruling on the validity of the Informations.[9] Subsequently, the public prosecutor filed a Manifestation[10] dated October 29, 2015 stating that the motion filed by respondent and acted upon by the RTC was "without the *imprimatur* or clear participation, *conforme*, or ratification made by the Public Prosecutor[.]"[11] The public prosecutor emphasized that respondent was not given any written authority to prosecute or initiate motions in the criminal cases without the public prosecutor or any handling prosecutor. Without the said authority, the public prosecutor manifested that the motion filed by respondent was not only premature but also invalid for lack of authority.[12]

Notwithstanding the public prosecutor's manifestation, respondent moved for the issuance of a writ of execution to enforce the mandatory preventive suspension of complainants on November 13, 2015, which was opposed by complainants again, alleging respondent's lack of authority to file the motion to place them under preventive suspension.[13] The motion was granted by the RTC in an Order[14] dated November 18, 2015 and the writ of execution[15] was issued on November 20, 2015.[16]

In light of the foregoing, complainants filed the instant complaint against respondent before the Integrated Bar of the Philippines (IBP) – Commission on Bar Discipline claiming that respondent violated the Code of Professional Responsibility (CPR) when: (*1*) he appeared as private prosecutor without proper authority coming from the public prosecutor; and (*2*) he filed the motions to place complainants under preventive suspension and for the issuance of the writ of execution despite the lack of conformity from the public prosecutor. According to complainants, respondent's act was exacerbated by the public prosecutor's refusal to sign the motion for the issuance of the writ of execution but was nevertheless filed by respondent.[17]

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6 Id. at 71-73.
7 Id. at 74-78.
8 Id. at 81-83. Penned by Acting Presiding Judge Rasad G. Balindong.
9 Id.
10 Id. at 79-80.
11 Id. at 79.
12 Id. at 79-80.
13 Id. at 84-86 and 89-94.
14 Id. at 87-88. Signed by Acting Presiding Judge Rasad G. Balindong.
15 Id. at 95-96.
16 Id. at 87-88.
17 Id. at 1-13.

In defense,[18] respondent admitted filing the motions in the RTC and claimed that the present complaint against him was not the proper remedy to the adverse resolution of the RTC in granting these motions. In particular, the filing of the motion to place complainants under preventive suspension was justified pursuant to the mandatory nature of the suspension under Section 13 of RA 3019. In this relation, he admitted that he had sent the motion to the public prosecutor for his conformity. Thus, he was "forced to file the motion without the public prosecutor's conformity since its [(*i.e.*, the motion)] approval or denial is addressed to the discretion of the trial court[.]"[19]

Further, he contended that the need for the written authority to appear as private prosecutor under the Rules of Court is only required when there is no regular prosecutor assigned to the court, or when the prosecutor assigned, due to heavy work schedule, cannot attend to the prosecution of the pending criminal cases. In addition, he argued that his appearance as private prosecutor was a legitimate exercise of his client's right to intervene in the criminal cases.[20] In his Position Paper,[21] he presented an Authority to Allow the Counsel of the Private Complainants to Prosecute the Cases as Private Prosecutor dated March 21, 2016, issued by Marawi City Prosecutor Alijas S. Colong.[22]

The IBP's Report and Recommendation

In a Report and Recommendation[23] dated June 21, 2021, the IBP Investigating Commissioner (IC) recommended that the complaint be dismissed for lack of merit.[24]

Considering the records of the case, the IC opined that complainants failed to discharge the burden of proving their allegations against respondent by clear and convincing evidence. The IC observed that respondent actively participated since the beginning of the criminal case without any objection from the accused and was thus acting under the supervision and control of the public prosecutor to prosecute the civil liability of the accused. Moreover, the IC observed that respondent, in filing the motions without the conformity of the public prosecutor, is not in itself sufficient to subject him to disciplinary action. The IC observed that respondent merely tried to advance the interests of his clients. Lastly, the IC likewise held that his actions were ratified when he subsequently secured the required written authorization.[25]

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18 Id. at 102-107.
19 Id. at 104.
20 Id. at 102-107.
21 Id. at 160-176 and 174.
22 Id. at 228.
23 Id. at 249-255. Signed by Investigating Commissioner Raymund G. Martelino.
24 Id. at 255.
25 Id. at 251-254.

In a Resolution[26] dated August 28, 2021, the IBP Board of Governors adopted and approved the IBP Commissioner's Report and Recommendation dismissing the complaint against respondent.

The Issue Before the Court

The issue before the Court is whether or not respondent should be held administratively liable for the acts complained of.

The Court's Ruling

The Court adopts the findings and recommendations of the IBP.

I

At the outset, it is necessary to clarify the quantum of proof required in administrative cases against lawyers. According to the IC, complainants are required to show clear and convincing evidence to hold lawyers administratively liable.[27] However, in *Reyes v. Nieva*,[28] the Court had the occasion to clarify that the quantum of proof required to hold lawyers liable in administrative cases is through substantial evidence – which is more than a mere scintilla but is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[29] There, the Court explained the rationale behind using this quantum of proof in disciplining erring lawyers, *viz.*:

> Besides, the evidentiary threshold of substantial evidence — as opposed to preponderance of evidence — is more in keeping with the primordial purpose of and essential considerations attending this type of cases. As case law elucidates, "**[d]isciplinary 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

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[26] Id. at 247. Signed by Assistant National Secretary Jose Angel B. Guidote, Jr.
[27] Id. at 254.
[28] 794 Phil. 360 (2016).
[29] Id. at 378.

> posture, there can thus be no occasion to speak of a complainant or a prosecutor."[30] (Emphasis and underscoring supplied)

Contrary to the IC's postulations, complainants are only required to prove that respondent violated the CPR by substantial evidence. Applying the foregoing quantum of proof, the Court now proceeds to determine whether respondent should be held administratively liable for acting without the conformity of the public prosecutor.

II

Section 5, Rule 110 of the Rules of Court, as amended by A.M. No. 02-2-07-SC,[31] provides:

> **Section 5**. *Who must prosecute criminal actions*. - All criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of a public prosecutor. In case of heavy work schedule of the public prosecutor or in the event of lack of public prosecutors, the private prosecutor may be authorized in writing by the Chief of the Prosecution Office or the Regional State Prosecutor to prosecute the case subject to the approval of the court. Once so authorized to prosecute the criminal action, the private prosecutor shall continue to prosecute the case up to end of the trial even in the absence of a public prosecutor, unless the authority is revoked or otherwise withdrawn.

The foregoing section reiterates the settled rule that it is the People of the Philippines who is the real party-in-interest in every criminal proceeding.[32] The private offended party's participation in the proceedings merely relates to the civil aspect of the case subject to certain exceptions (*i.e.*, the denial of due process).[33]

In *People v. Beriales*,[34] the Court had the occasion to explain the rationale behind the rule, *viz.*:

> Under the Rules of Court, "All criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of the fiscal." In the trial of criminal cases, it is the duty of the public prosecutor to appear for the government. As stated by this Court, "once a public prosecutor has been entrusted with the investigation of a case and has acted thereon by filing the necessary information in court he is by law in duty bound to take charge thereof until its final termination, for under the law he assumes full responsibility for his failure or success since he is the one more adequately prepared to pursue it to its termination." While there

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30 Id. at 379-380.

31 Entitled "RE: PROPOSED AMENDMENTS TO SECTION 5, RULE 110 OF THE REVISED RULES OF CRIMINAL PROCEDURE," approved on April 10, 2002.

32 *Salvador v. Chua*, 764 Phil. 244 (2015).

33 See *People v. Santiago*, 255 Phil. 851 (1989).

34 162 Phil 478 (1976).

> is nothing in the rule of practice and procedure in criminal cases which denies the right of the fiscal, in the exercise of a sound discretion, to turn over the active conduct of the trial to a private prosecutor, nevertheless, his duty to direct and control the prosecution of criminal cases requires that he must be present during the proceedings.[35]

In other words, the prosecution of offenses is a public function which calls for the public prosecutor to act in representation of the People.[36]

However, the Court in the case of *Flores v. Hon. Layosa*[37](*Flores*) held that a motion to suspend public officers during the pendency of a criminal case involving violations of RA 3019 against them does not require the conformity of the public prosecutor due to the mandatory nature of the preventive suspension under Section 13 of the same law, *viz.*:

> Now, the issue of whether the motion to suspend petitioners filed by Atty. Montera may validly trigger the assailed suspension order.
>
> As the offense for which petitioners are charged clearly falls under Section 13, R.A. No. 3019, it follows that their suspension *pendente lite* is mandatory pursuant to the said law and pertinent jurisprudence. The trial court is left with no alternative but to order the suspension of the accused public official *pendente lite* upon being convinced that the information charges the accused with acts of fraud involving government funds. Its duty to order the suspension of the accused *pendente lite* is mandatory in character and must be issued by the court **regardless of whether the prosecution files a motion for the preventive suspension of the petitioners, or if the motion is filed by the counsel of the government agency concerned, *with or without the conformity of the public prosecutor.*** In fact, Section 13, R.A. 3019, as worded, allows the court to issue such suspension order *motu proprio*.[38] (Emphasis and underscoring supplied)

In view of the Court's pronouncement in *Flores* and the mandatory nature of the preventive suspension under Section 13 of RA 3019, the Court holds that respondent cannot be held administratively liable for filing the motion to place the complainants under preventive suspension despite the lack of conformity of the public prosecutor.

FOR THESE REASONS, the Administrative Complaint against respondent Atty. Edgar A. Masorong is hereby **DISMISSED** for lack of merit.

SO ORDERED."

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35 Id.
36 *Mobilia Products, Inc. v. Umezawa*, 493 Phil 85 (2005).
37 479 Phil. 1020 (2004).
38 Id.

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court
22 NOV 2022

ATTY. SHAYMA A. ABDULLAH (reg)
Counsel for Complainants
No. 24 Menor Street Extension
Pangarungan Village, Barrio Sungcay
Marawi City, 9700

ATTY. EDGAR A. MASORONG (reg)
Respondent
c/o Ms. Rainneheart M. Masorong
Investigation and Adjudication Division
Department of the Building Official
3/F, Bldg. Regulatory Office (Civic Center D)
Quezon City Hall Compound
Diliman, Quezon City

INTEGRATED BAR OF THE PHILIPPINES (reg)
Doña Julia Vargas Avenue
Ortigas Center, 1605 Pasig City

THE BAR CONFIDANT (x)
Supreme Court, Manila

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OFFICE OF THE CHIEF ATTORNEY (x)
PHILIPPINE JUDICIAL ACADEMY (x)
Supreme Court, Manila

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