



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **January 25, 2023**, which reads as follows:*

“A.C. No. 13424 (Valentino C. Leano, Complainant v. Atty. Maxwell S. Rosete, Respondent).— Called to fore is the Petition for Disbarment and Cancellation and/or Revocation of Notarial Commission¹ filed by Valentino C. Leano (complainant) before the Committee on Bar Discipline (CBD) of the Integrated Bar of the Philippines (IBP) against Atty. Maxwell S. Rosete (respondent) for violation of Lawyer’s Oath and Canons 1.01 and 8.01 of the Code of Professional Responsibility, docketed as CBD Case No. 18-5873.

ANTECEDENTS

Complainant sought the disbarment or suspension and the cancellation and/or revocation of respondent’s notarial commission for purportedly practicing law *sans* authority. The Petition avouched, *inter alia*, that—

X X X X

ONE - That I am the defendant in CIVIL CASE NO. 36-3594 entitled Spouses Juanito Tabudlo and Myrna Tabudlo as represented by Miguel Cauilan and Jorge Cauilan versus [complainant] pending before the Regional Trial Court of Branch 36, Santiago City. Copy of the Complaint is hereto attached as Annex "A" and made an integral part hereof. It was filed sometime on ____2009;

TWO - That the first lawyer of the Plaintiffs was Atty. Hipolito Salatan but who was replaced by the Plaintiffs for reason only known to them;

THREE- That after the withdrawal of Atty. Hipolito Salatan as the counsel for the Plaintiff, [respondent] entered his appearance as counsel thereto together with his associates. The name of the Plaintiffs law firm is The Law Firm of Rosete and Associates. Copy of their entry of appearance is hereto attached as Annex "B" and made parts hereof;

¹ Rollo, pp. 1-4.

FOUR - That [respondent] signed the pleadings, appeared and participated in the trials and argumentations of the said case;

FIVE - That without our knowledge, the first time that [respondent] appeared for the case, **he has no (sic) compliance of the Mandatory Continuing Legal Education (MCLE) and thus, he has no authority to file pleadings, appear in court as counsel, notarize documents, in other words, he has no authority to practice law for the time being that he had not complied with the MCLE provisions;**

SIX- That [respondent] **was dishonest, not only with his clients, to the parties to the case and also to the court, when he appeared with (sic) any MCLE Compliance and worst, indicated in his pleadings that he had complied when in fact and truth he had not. This is plain DISHONESTY and GRAVE MISCONDUCT of a lawyer who is duty-bound to uphold the law and do no falsehood or consent to the doing of any in court;**

SEVEN - That a Certification from the MCLE Office reveals that [respondent] attended and took Compliance Nos. I-IV, in just one day, APRIL 15, 2011. This is highly improbable if not impossible physically. This is so because the attendance to the MCLE is personal, meaning, the lawyer-attendee must be personally present in every venue of the MCLE Seminar and each seminar takes about five (5) days of (sic) more. If there are four venues of the MCLE Seminar, how did he attend to all these four (4) seminars simultaneously? Could it be that he divided himself into four so that his three other self would attend to the other three seminars? Or could it be that he talked to other persons and had them misrepresent themselves to be [RESPONDENT] and attended (sic) the other three seminars. The pint (sic) here is that **THERE IS A CLEAR MISREPRESENTATION amounting to GRAVE MISCONDUCT AND DISHONESTY on the part of [respondent]. On this ground alone, he should be DISBARRED FROM THE PRCATICE (sic) OF LAW. He put a mockery of the MCLE system. Copy of the Certification from the MCLE is hereto attached as Annex "C" and made integral parts hereof;**

EIGHT - That furthermore, he had not learned his lesson very well. He was dismissed from service as judge and yet he did not changed (sic) a bit. He keep on violating laws, committing acts violative if (sic) his oath of attorney to the prejudice of the public and if not abated, he will surely wreck havoc to the unsuspecting community;² [Emphasis supplied]

Expostulating against complainant's avowals, respondent proffered evidence that he was compliant with the Mandatory Continuing Legal Education (MCLE) requirements, having attended and completed all the prescribed units for each compliance period from the first to the sixth compliance periods.³ He renounced the derogatory imputations of dishonesty and grave misconduct hurled by complainant against him and his practice of law.⁴

² *Id.* at 1-3.

³ *Id.* at 35-37, 135-149.

⁴ *Id.* at 30-32.

In the Report and Recommendation⁵ dated May 28, 2021, IBP Investigating Commissioner Atty. Marie Fe V. Galvez-Garcia (Commissioner Galvez-Garcia) found no basis to disbar/suspend respondent and cancel/revoke his notarial commission, ratiocinating and disposing in this wise:

From the submissions of both parties, it is apparent that the date April 15, 2011 refers to the date when the Certificates of Compliance were issued, not the date when respondent actually took the seminars. Hence, it addressed complainant's quandary as to the improbability of respondent attending and completing the four (4) MCLE seminars.

....

Records do not show that respondent was given the Non-Compliance Notice nor considered as a delinquent member by the IBP Board of Governors. Hence for all intents and purposes, he was not suspended nor disqualified to practice law.

Nonetheless, to fully complete the material facts of the instant case, this Commissioner took the liberty to inquire from the MCLE Office the record of respondent Rosete's attendance for each MCLE Compliance. Complainant alleged that respondent represented his client on October 27, 2010, this means that respondent should have been MCLE compliant for the 1st, 2nd and 3rd compliance periods. Records from the MCLE revealed that respondent completed his 1st compliance in May 2010, his 2nd compliance in July 2010 and his 3rd compliance in August 2010.

Hence, from the foregoing it shows that at the time respondent Rosete appeared in Civil Case No. 36-3594 on October 27, 2010, he is MCLE compliant.

Finally, as to complainant's prayer for the Revocation of respondent's Notarial Commission for his misrepresentation that he is MCLE compliant, there is no ground to sustain the same.

WHEREFORE, premises considered, it is hereby recommended that the instant case be **DISMISSED**.

Respectfully submitted.⁶

As it happened, the IBP Board of Governors issued the Notice of Resolution⁷ dated January 29, 2022 adopting Commissioner Galvez-Garcia's Report and Recommendation, viz.:

Please take notice that on January 29, 2022 a resolution was passed by the Board of Governors of the Integrated Bar of the Philippines in the above-entitled case the original of which is now on file in this office, quote:

RESOLUTION NO. CBD-XXV-2022-01-24
CBD Case No. 18-5873
Valentino C. Leano vs. Atty. Maxwell S. Rosete

⁵ *Id.*, unpaginated.

⁶ *Id.*, unpaginated.

⁷ *Id.*, unpaginated.

RESOLVED, to APPROVE and ADOPT, as it is hereby APPROVED and ADOPTED, the Report and Recommendation of the Investigating Commissioner in the instant case, to **DISMISS** the complaint against the Respondent for lack of merit.⁸

The main thrust for this Court's resolution is whether or not respondent should be held administratively liable as charged.

The Court adopts the recommendation of the IBP Board of Governors.

In administrative proceedings, such as disbarment, the quantum of proof necessary for a finding of guilt is substantial evidence, *i.e.*, that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion. Complainants have the burden of proving by substantial evidence the allegations in their complaints. The basic rule is that mere allegation is not evidence and is not equivalent to proof. Charges based on mere suspicion and speculation likewise cannot be given credence.⁹

The only issue to be decided by the Court in administrative cases against lawyers is whether the attorney is still deserving to enjoy the privileges as such.¹⁰ The Court, in the exercise of its disciplinary powers, calls upon every member of the Bar to account for his or her 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 proven themselves no longer worthy to be entrusted with the duties and responsibilities pertaining to the office of an attorney.¹¹

Considering the serious consequence of the disbarment or suspension of a member of the Bar, the Court will not penalize lawyers unless it is unmistakably shown that they are unfit to continue being a member of the Bar.¹² In *Buntag v. Atty. Toledo*,¹³ the Court reiterated the ruling in *Advincula v. Atty. Macabata*,¹⁴ viz.:

As a basic rule in evidence, the burden of proof lies on the party who makes the allegations — *Ei incumbit probation, qui decit, non qui negat; cum per rerum naturam factum negantis probation nulla sit*. In the case at bar, complainant miserably failed to comply with the burden of proof required of her. A mere charge or allegation of wrongdoing does not suffice. Accusation is not synonymous with guilt.

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⁸ *Id.*, Signed by National Secretary Doroteo Lorenzo B. Aguila.

⁹ *Aguirre v. Reyes*, A.C. No. 4355, 8 January 2020 [Per J. Lazaro-Javier, First Division].

¹⁰ See *Fortune Medicare, Inc. v. Lee*, A.C. No. 9833, 19 March 2019 [Per Curiam, *En Banc*] at 797-798. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

¹¹ See *Espanto v. Atty. Belleza*, 826 Phil. 412, 418-419 (2018) [Per J. Peralta, Second Division].

¹² See *Fajardo v. Atty. Alvarez*, 785 Phil. 303, 323 (2016) [Per J. Leonen, Second Division].

¹³ A.C. No. 12125, 11 February 2019 [Per J. Leonen, Third Division].

¹⁴ 546 Phil. 431, 446-448 (2007) [Per J. Chico-Nazario, Third Division]

The power to disbar or suspend ought always to be exercised on the preservative and not on the vindictive principle, with great caution and only for the most weighty reasons and only on clear cases of misconduct which seriously affect the standing and character of the lawyer as an officer of the court and member of the Bar. Only those acts which cause loss of moral character should merit disbarment or suspension, while those acts which neither affect nor erode the moral character of the lawyer should only justify a lesser sanction unless they are of such nature and to such extent as to clearly show the lawyer's unfitness to continue in the practice of law. The dubious character of the act charged as well as the motivation which induced the lawyer to commit it must be clearly demonstrated before suspension or disbarment is meted out. The mitigating or aggravating circumstances that attended the commission of the offense should also be considered.¹⁵

Appositely, Rule III, Section 1 of the 2004 Rules on Notarial Practice¹⁶ could not be clearer anent the qualifications for the issuance of a notarial commission, to wit:

RULE III COMMISSIONING OF NOTARY PUBLIC

SECTION 1. Qualifications. -A notarial commission may be issued by an Executive Judge to any qualified person who submits a petition in accordance with these Rules.

To be eligible for commissioning as notary public, the petitioner:

1. must be a citizen of the Philippines;
2. must be over twenty-one (21) years of age;
3. must be a resident in the Philippines for at least one (1) year and maintains a (regular place of work or business in the city or province where the commission is to be issued;
4. must be a member of the Philippine Bar in good standing with clearances from the Office of the Bar Confidant of the Supreme Court and the Integrated Bar of the Philippines; and
5. must not have been convicted in the first instance of any crime involving moral turpitude.

Meanwhile, Rule XI, Section 1(a)(b) of the same Rules is explicit as to the grounds that would warrant the revocation and imposition of disciplinary sanctions to the erring notary public—

RULE XI REVOCATION OF COMMISSION AND DISCIPLINARY SANCTIONS

SECTION 1. Revocation and Administrative Sanctions. - (a) The Executive Judge shall revoke a notarial commission for any ground on which an application for a commission may be denied.

(b) In addition, the Executive Judge may revoke the commission of, or impose appropriate administrative sanctions upon, any notary public who:

¹⁵ *Supra* note 13 at 623-624. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

¹⁶ A.M. No. 02-8-13-SC, 6 July 2004.

1. fails to keep a notarial register;
2. fails to make the proper entry or entries in his notarial register concerning his notarial acts;
3. fails to send the copy of the entries to the Executive Judge within the first ten (10) days of the month following;
4. fails to affix to acknowledgments the date of expiration of his commission;
5. fails to submit his notarial register, when filled, to the Executive Judge;
6. fails to make his report, within a reasonable time, to the Executive Judge concerning the performance of his duties, as may be required by the judge;
7. fails to require the presence of a principal at the time of the notarial act;
8. fails to identify a principal on the basis of personal knowledge or competent evidence;
9. executes a false or incomplete certificate under Section 5, Rule IV;
10. knowingly performs or fails to perform any other act prohibited or mandated by these Rules; and
11. commits any other dereliction or act which in the judgment of the Executive Judge constitutes good cause for revocation of commission or imposition of administrative sanction.

In seeking respondent's disbarment and cancellation/revocation of his notarial commission, complainant asseverates that he committed acts of dishonesty and grave misconduct when he purportedly practiced law sans compliance with the prescribed MCLE units. Thusly, he had no authority to appear in court as counsel, to sign and file pleadings, and to notarize documents. In misrepresenting himself, he purportedly violated his lawyer's oath and the Code of Professional Responsibility.¹⁷

The Court is baffled by complainant's bemoaning.

There is palpable dearth of proof showing that respondent was remiss in his obligations as an officer of the court. Complainant's attribution of dishonesty and grave misconduct against respondent falls flat on its face when juxtaposed with the overwhelming evidence presented to belie the accusations. Respondent offered in evidence his MCLE compliance certificates from the first to the fifth compliance periods issued by this Court's MCLE Office,¹⁸ his attendance slips for the ongoing sixth compliance period from the UP Law Center Institute,¹⁹ and the certification with print out of his MCLE credit unit summary and compliance details also issued by the MCLE office.²⁰ These were likewise verified by Commissioner Galvez-Garcia herself on an inquiry she personally made with the MCLE office in the course of her investigation. Verily, complainant's imputation of dishonesty and grave misconduct against respondent is bereft of factual and legal mooring.

¹⁷ *Rollo*, p. 2.

¹⁸ *Id.* at 35-1 to 35-5.

¹⁹ *Id.* at 36-37.

²⁰ *Id.* at 135-147.

Given the foregoing disquisitions, the Court concurs with the IBP Board of Governors in dismissing the complaint against respondent for lack of merit.

A final note. The public must be reminded that lawyers are professionals bound to observe and follow the strictest ethical canons. Subjecting them to frivolous, unfounded, and vexatious charges of misconduct and misbehavior will cause not only disservice to the ideals of justice, but a disregard of the Constitution and the laws to which all lawyers vow their enduring fealty.²¹


WHEREFORE, the Petition for Disbarment and cancellation and/or Revocation of Notarial Commission against Atty. Maxwell S. Rosete is hereby **DISMISSED**.

SO ORDERED.”

By authority of the Court:

MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court

By:


RUMAR D. PASION
Deputy Division Clerk of Court
JAN 24 4:14:23

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²¹ *Magusara v. Rastica*, A.C. No. 11131, March 13, 2019 [Per J. Jardeleza, First Division] at 6. This pinpoint citation refers to the copy of this Decision uploaded to the Supreme Court website.