



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **June 22, 2022**, which reads as follows:*

A.C. No. 13140 — ROBERTO D. TUAZON, complainant, versus ATTY. JOSE ANTONIO GALLO, respondent.

After a careful review of the records of the case and the evidence submitted by the parties, the Court resolves to adopt the recommendation of the Integrated Bar of the Philippines (IBP) to dismiss the disciplinary complaint against respondent Atty. Jose Antonio Gallo (Atty. Gallo).

The Court consistently holds that a lawyer enjoys the presumption of innocence, and it is upon the complainant that the burden of proof rests to satisfactorily prove the allegations in the complaint.¹ It should be clarified, however, that the quantum of proof for administrative proceedings against lawyers is substantial evidence and not clear and convincing evidence as stated in the Report and Recommendation adopted by the IBP Board of Governors. This was already settled in *Reyes v. Nieva*,² which the Court reiterated in *Tan v. Alvarico*:³

In the IBP Commissioner's Report and Recommendation adopted by the IBP Board of Governors, the quantum of proof by which the charges against respondent were assessed was preponderance of evidence, which is defined under Section 1, Rule 133 of the Revised Rules on Evidence as "superior weight of evidence on [where] the issues involved lies." **Notably, however, the Court has already clarified in *Reyes v. Atty. Nieva* that based on a survey of jurisprudence, the quantum of proof for administrative proceedings against lawyers is substantial evidence and not preponderance of evidence. We stressed that this pronouncement ought to control and quell any further confusion on the proper evidentiary threshold.** Moreover, we recognized that 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 disciplinary cases:

¹ *Goopio v. Maglalang*, 837 Phil. 565, 575 (2018).

² 794 Phil. 360 (2016).

³ A.C. No. 10933, November 3, 2020, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66529>>.

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 posture, there can thus be no occasion to speak of a complainant or a prosecutor.**”

A survey of administrative cases recently promulgated in the year 2020 affirms that the Court has been applying substantial evidence as the quantum of proof in disbarment proceedings.⁴ (Emphasis supplied)

Atty. Gallo was engaged to provide legal advice on Tuazon’s situation regarding his medical clerkship, which the school allegedly asked him to unjustifiably repeat. Tuazon also asked Atty. Gallo to advocate for him before the Commission on Higher Education (CHED). Accordingly, Atty. Gallo answered the queries of Tuazon, and laid down the groundwork for the possible filing of a complaint against the school by obtaining information from a professor therein. He likewise took the time to find out the appropriate manner by which he can initiate the complaint with CHED. Undaunted even by the filing of the present complaint against him, Atty. Gallo manifested his willingness to continue rendering legal services for Tuazon under the same engagement in his Conference Brief before the IBP.⁵ This clearly evinces Atty. Gallo’s fidelity to the cause of his client, belying the allegation of abandonment and neglect. However, Tuazon refused to accept the offer and insisted instead on charging Atty. Gallo for abandonment of his case.⁶

But other than his own allegations, Tuazon did not present any evidence to establish his claim that Atty. Gallo failed to render legal services after receiving the acceptance fee. On the contrary, it appears that it was by his own fault that Atty. Gallo was unable to file the complaint Tuazon sought to initiate against his school. Despite Atty. Gallo’s requests for Tuazon’s assistance in the

⁴ Id.

⁵ *Rollo*, p. 32.

⁶ Id. at 42.

preparation of the complaint, Tuazon was unresponsive and provided Atty. Gallo with no means by which he can pursue the matter.

In accepting a case, a lawyer is bound to serve his or her client with competence and diligence,⁷ and to be mindful of the trust and confidence reposed on him or her.⁸ However, neither a lawyer's acceptance of a case, nor an assurance to the client that the lawyer will handle the matter guarantees victory. A client who receives an adverse judgment or unfavorable result cannot simply resort to the filing of a disbarment or disciplinary complaint against the lawyer when the available remedies under the applicable statute or regulation are lost.

In all, the dearth of evidence against Atty. Gallo cannot justify the charge of abandonment or neglect of duty, as provided in Rule 18.03⁹ of the Code of Professional Responsibility. The Court has always been mindful of the severity of disbaring or suspending a lawyer from the practice of law, which has always been reserved for clear cases of misconduct affecting the standing and moral character of the lawyer as an officer of the court.¹⁰

As to the acceptance fee that Tuazon paid to Atty. Gallo, jurisprudence dictates that the return of the acceptance fee is warranted only when there is a finding of fault or negligence on the part of the lawyer.¹¹ The acceptance fee represents the opportunity cost of the lawyer's acceptance of the case, as the lawyer is, at that point, precluded from handling cases of the opposing party based on the prohibition on conflict of interest. Since the acceptance fee only seeks to compensate the lawyer for the lost opportunity, it is not measured by the nature and extent of the legal services rendered.¹² There being no negligence or fault on the part of Atty. Gallo, he is not liable to return the amount.

The Court reiterates that the complainant bears the burden of proving the charges in the complaint. Since Tuazon, the complainant in this case, failed to discharge this burden, Atty. Gallo's right to be presumed innocent prevails.

WHEREFORE, the Court resolves to **NOTE** the Notice of Resolution dated August 8, 2020 of the Integrated Bar of the Philippines – Board of Governors, transmitted by letter dated August 4, 2021 of Atty. Avelino V. Sales, Jr., Director for Bar Discipline, Integrated Bar of the Philippines, together with the records and flash drive file.

The Court further resolves to **ADOPT** and **APPROVE** the findings of fact and recommendation of the Investigating Commissioner in the Report and Recommendation dated January 2, 2020, as approved by the Integrated Bar of the Philippines – Board of Governors in its Notice of Resolution dated August

⁷ CODE OF PROFESSIONAL RESPONSIBILITY, Canon 18.

⁸ CODE OF PROFESSIONAL RESPONSIBILITY, Canon 17.

⁹ Rule 18.03 - A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

¹⁰ *Munar v. Bautista*, 805 Phil. 384, 398 (2017).

¹¹ *Dalupan v. Gacott*, 762 Phil. 1, 9 (2015). See *Ignacio v. Alviar*, 813 Phil. 782 (2015).

¹² *Dalupan v. Gacott*, id. at 8; *Ignacio v. Alviar*, id. at 793.

8, 2020. Accordingly, the administrative case against Atty. Jose Antonio Gallo is **DISMISSED** for lack of merit.

SO ORDERED.

By authority of the Court:

Mis ADC Batt
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court *6/21/22*

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