



Republic of the Philippines  
Supreme Court  
Cagayan de Oro City

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **March 6, 2023** which reads as follows:*

**“A.C. No. 13456 [Formerly CBD Case No. 18-5749] (Pedro M. Banusing v. Atty. Pepin Joey Q. Marfil).** — This is an administrative complaint for disbarment<sup>1</sup> filed by complainant Pedro M. Banusing against respondent Atty. Pepin Joey Q. Marfil for violation of the Rules of Notarial Practice. The Integrated Bar of the Philippines (IBP) Board of Governors, in its Notice of Resolution dated 12 February 2022, adopted the recommendation of the IBP Commission on Bar Discipline (IBP-CBD) in dismissing the complaint for lack of merit.

In a letter-complaint dated 11 April 2018 filed before the IBP, complainant alleged that respondent notarized several documents involving the following parties as follows:

1. Deed of Sale with Repurchase dated 27 October 2011 executed by Esteban Banusing, married to Julie P. Banusing in favor of Linda Banusing Ordinario married to Proceso Ordinario.<sup>2</sup>
2. Subdivision Agreement dated 5 April 2013 executed by Clarissa B. Fresnido; Mesalina M. Banusing; Pedro M. Banusing, married to Erlinda H. Banusing; Catalina B. Valdivieso; Heirs of Lauro Banusing, represented by Lauro T. Banusing, Jr.; Linda Banusing-Ordinario, married to Ceso Ordinario; Augusto M. Banusing; Heirs of Oscar Banusing, represented by Gina Banusing-Marfil; and Esteban M. Banusing, married to Julie P. Banusing.<sup>3</sup>
3. Deed of Extrajudicial Settlement of Estate and Partition dated 5 April 2013 executed by Clarissa B. Fresnido; Mesalina M. Banusing; Pedro M. Banusing, married to Erlinda H.

<sup>1</sup> *Rollo*, pp. 1–2.

<sup>2</sup> *Id.* at 4–6.

<sup>3</sup> *Id.* at 7–10.

Banusing; Catalina B. Valdivieso; Heirs of Lauro Banusing, represented by Lauro T. Banusing, Jr.; Linda Banusing-Ordinario, married to Ceso Ordinario; Augusto M. Banusing; Heirs of Oscar Banusing, represented by Gina Banusing-Marfil; and Esteban M. Banusing, married to Julie P. Banusing.<sup>4</sup>

4. Adverse Claim dated 5 November 2015 executed by Gina Banusing Marfil.<sup>5</sup>
5. Waiver of Rights dated 21 March 2014 executed Mesalina M. Banusing as Waivor and Neil S. Banusing as Waivee.<sup>6</sup>
6. Waiver of Rights dated 21 March 2014 executed Mesalina M. Banusing as Waivor and Gilbert S. Banusing as Waivee.<sup>7</sup>
7. Verification and Certification of Non-Forum Shopping dated 5 November 2014 executed by Mesalina M. Banusing, Mark Banusing and Allan Banusing, Jr.<sup>8</sup>

Complainant asserted that Oscar Banusing, one of the parties in the abovementioned transactions, is the father of Gina Banusing who is the wife of respondent. Oscar Banusing, Mesalina Banusing, Allan Banusing, Sr., Lina Banusing Ordinario, Esteban Banusing, Lauro Banusing, Sr., and complainant himself are siblings, while Allan Banusing, Jr., Neil Banusing, Gilbert Banusing and Gina Banusing are first cousins, or relatives within the fourth degree of consanguinity. By notarizing the aforesaid documents involving the said parties, complainant asserted that respondent violated Section 3, Paragraph 1(b) and (c) of the Rules on Notarial Practice.<sup>9</sup>

In its Order<sup>10</sup> dated 13 July 2018, the IBP-CBD directed respondent to submit an Answer. However, in a letter dated 16 November 2018, complainant informed the IBP that he is submitting an Affidavit of Desistance<sup>11</sup> where he stated that it was not his voluntary intention to file the administrative complaint against respondent who happens to be his niece's husband; that he signed the complaint and the necessary documents without reading; and that he only realized what he had done when he received the notice from the IBP concerning the complaint. He added that the issue concerning the case would be best resolved by amicable settlement between them since it is a family concern.

In its Report and Recommendation<sup>12</sup> dated 21 September 2021, the IBP-CBD recommended the dismissal of the complaint. The IBP-CBD found

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<sup>4</sup> Id. at 11–14.

<sup>5</sup> Id. at 15.

<sup>6</sup> Id. at 16.

<sup>7</sup> Id. at 17.

<sup>8</sup> Id. at 18.

<sup>9</sup> Id. at 2.

<sup>10</sup> Id. at 26.

<sup>11</sup> Id. at 29–30.

<sup>12</sup> Id. (unpaginated); penned by Commissioner Rogelio D. Torres, Jr.

no proof showing that respondent committed any act that constituted a violation of the Rules on Notarial Practice. Neither was there proof of filiation between the parties indicated in the notarized documents as to constitute a violation of Sec. 3(c), Rules of Notarial Practice, nor respondent's participation in the transactions other than a notary public would establish a violation of Sec. 3(a) of said Rules. While there is a person named Gina Banusing-Marfil who signed the documents and bears the same surname as that of respondent, without a marriage certificate to show that they are indeed married to each other, there cannot be any finding of violation of Sec. 3(c).<sup>13</sup>

Thereafter, the IBP Board of Governors, in its Notice of Resolution dated 12 February 2022, approved and adopted the Report and Recommendation of the IBP-CBD to dismiss the complaint for lack of merit.<sup>14</sup>

The Court agrees.

In the instant case, respondent is charged for his notarial acts constituting violation of Sec. 3(b) and (c), Rule IV, 2004 Rules on Notarial Practice which enumerates the instances when a notary public is disqualified from performing a notarial act:

*Sec. 3 Disqualifications.* — A notary public is disqualified from performing a notarial act if he:

(a) is a party to the instrument or document that is to be notarized;

**(b) will receive, as a direct or indirect result, any commission, fee, advantage, right, title, interest, cash, property, or other consideration, except as provided by these Rules and by law; or**

**(c) is a spouse, common-law partner, ancestor, descendant, or relative by affinity or consanguinity of the principal within the fourth civil degree.** (Emphasis supplied)

However, aside from the complaint filed with the IBP on 13 April 2018 and the subject copies of documents notarized by respondent, complainant did not adduce any other proof as he thereafter executed an Affidavit of Desistance dated 16 November 2018 stating that he was unaware of the complaint filed against respondent before the IBP.

Time and again, the Court has stressed that the execution of an affidavit of desistance cannot have the effect of abating the instant proceedings against a respondent in view of the public service character of the practice of law and the nature of disbarment proceedings as a public interest concern. A case of suspension or disbarment is *sui generis* and not meant to grant relief to a complainant as in a civil case but is intended to cleanse the ranks of the legal

<sup>13</sup> Report and Recommendation, p. 4.

<sup>14</sup> *Rollo*, unpaginated.

profession of its undesirable members in order to protect the public and the courts. A disbarment case is not an investigation into the acts of respondent but on his conduct as an officer of the court and his fitness to continue as a member of the Bar.<sup>15</sup> However, it is also well settled that, in disbarment proceedings, the burden of proof is upon the complainant and this Court will exercise its disciplinary power only if the former establishes his/her case by clear, convincing, and satisfactory evidence.<sup>16</sup>

In the case at bench, there is no absolute evidence to show that respondent indeed received any commission or any other consideration in performing the subject notarial acts in violation of Sec. 3(b), Rule IV, 2004 Rules on Notarial Practice. Likewise, as noted by the IBP-CBD:

In this case, there is neither proof of filiation between the parties indicated in the documents notarized by respondent, on one hand, and the respondent himself, on the other hand, as to constitute a violation of Section 3(c) of the Rules on Notarial Practice, nor based on the documents themselves, respondent's supposed participation other than a notary public in the said documents, as to constitute a violation of Section 3(a) of the Rules on Notarial Practice.<sup>17</sup>

A member of the bar may be disbarred for any deceit, malpractice or other gross misconduct or by reason of conviction of a crime involving moral turpitude as provided in Sec. 27, Rule 138, Rules of Court:

*Sec. 27. Disbarment or suspension of attorneys by Supreme Court, grounds therefor.* — A member of the bar may be disbarred or suspended from his [or her] office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he [or she] is required to take before admission to practice, or for a willful disobedience of any lawful order of a superior court, or for corruptly or willfully appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.

However, as stated earlier, the case against respondent must be established by convincing and satisfactory proof for the Court to exercise its disciplinary powers.<sup>18</sup> Basic is the rule that a mere allegation is not evidence and is not equivalent to proof.<sup>19</sup> In this case, respondent cannot be made liable for the acts alleged in the complaint due to insufficiency of the evidence on record.

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<sup>15</sup> *Cristobal v. Atty. Renta*, 743 Phil. 145, 148 (2014).

<sup>16</sup> *Narag v. Atty. Narag*, 353 Phil. 643, 655–656 (1998).

<sup>17</sup> Report and Recommendation, p. 4.

<sup>18</sup> *Bernal, Jr. v. Atty. Prias*, A.C. No. 11217, 7 October 2020.

<sup>19</sup> *Macaventa v. Atty. Nuyda*, A.C. No. 11087, 12 October 2020.

It has been held that while the Court will not avoid its responsibility in meting out the proper disciplinary punishment upon lawyers who fail to live up to their sworn duties, the Court will not wield its axe on those against whom the accusations were not indubitably proven.<sup>20</sup>

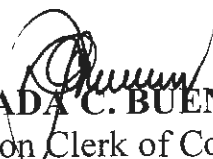
In sum, the Court is constrained to dismiss the charges against for lack of evidence.

**WHEREFORE**, the Court resolves to **NOTE** the Notice of Resolution dated 12 February 2022 of the Board of Governors of the Integrated Bar of the Philippines and to **ADOPT** and **APPROVE** the findings of fact, conclusions of law, and recommendations of the Commission on Bar Discipline in the attached Report and Recommendation dated 21 September 2021 of the Investigating Commissioner which the Integrated Bar of the Philippines Board of Governors likewise adopted and approved. Accordingly, the instant Complaint against Atty. Pepin Joey Q. Marfil is **DISMISSED**.

The case is considered **CLOSED** and **TERMINATED**.

**SO ORDERED.”**

**By authority of the Court:**

  
**LIBRADA C. BUENA**  
Division Clerk of Court  
9/3/29

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court

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MAR 30 2023

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<sup>20</sup> *Lanuza v. Atty. Magsalin III*, 749 Phil. 104, 113 (2014).