



Republic of the Philippines  
**Supreme Court**  
Manila

**FIRST DIVISION**

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated November 22, 2023, which reads as follows:*

“A.C. No. 10975 [Formerly CBD Case No. 17-5395] (Reyge Toh-Li Y. Lim, Complainant v. Assistant City Prosecutor Edwinlino B. Custodio, Respondent).—Reyge Toh-Li Y. Lim (complainant) filed a Complaint-Affidavit<sup>1</sup> seeking the disbarment of Assistant City Prosecutor Edwinlino B. Custodio (respondent), alleging grave misconduct and gross negligence in the performance of duty as public prosecutor for the latter’s failure to file the required judicial affidavit on time in Criminal Case No. 52028 for Attempted Homicide where complainant was the private-complainant.<sup>2</sup>

In 2010, respondent was appointed as Assistant City Prosecutor, and later assigned as Trial Prosecutor in Zamboanga City.<sup>3</sup> On October 10, 2014, the City Prosecutor’s Office of Zamboanga City received complainant’s Complaint for Frustrated Murder against a certain Jerson M. Monteverde (Monteverde). On January 5, 2015, an Information for Attempted Homicide entitled *People of the Philippines v. Jerson M. Monteverde* was filed and raffled to a trial court where respondent was assigned as prosecutor.<sup>4</sup>

On March 16, 2015, Monteverde pleaded not guilty during the arraignment of said case. Presiding Judge Carlo Martin R. Alcala (Presiding Judge Alcala) ordered the immediate referral of the parties to the Philippine Mediation Center. Should the conciliation between the parties fail, their counsels were ordered to submit the judicial affidavits of their witnesses, among others.<sup>5</sup> At the same time, complainant manifested that he would not be available on the subsequent hearing date scheduled on April 15, 2015 (April 15

<sup>1</sup> *Rollo*, pp. 1–10.

<sup>2</sup> *Id.* at 1.

<sup>3</sup> *Id.* at 42. *See* IBP Report and Recommendation, p. 1.

<sup>4</sup> IBP Report and Recommendation, pp. 1–2.

<sup>5</sup> *Rollo*, p. 43. *See* IBP Report and Recommendation, p. 2.

hearing) since he had to attend another hearing in Tagaytay City.<sup>6</sup> Presiding Judge Alcala clarified that complainant's presence in the April 15 hearing is not indispensable. Hence, complainant should coordinate with respondent for the preparation of the judicial affidavit in case the conciliation fails and considering the conflict of schedule as well as travel arrangements of complainant whose address was transferred from Zamboanga to Laguna.<sup>7</sup>

On March 27, 2015, respondent requested complainant to come to his office to check the draft judicial affidavit. On said day, complainant was asked to return the next day since the draft was not yet ready. On the succeeding day, the draft judicial affidavit was given to complainant for his review. Meanwhile, respondent went to the adjacent room to attend to an important discussion as he was part of the panel of prosecutors investigating a bombing incident in a bus terminal.<sup>8</sup> While complainant was perusing the draft judicial affidavit, he implied to respondent's staff that he wanted to show said affidavit to his brother-in-law who is also a lawyer. After a while, respondent went back, and complainant was no longer there. Respondent's staff informed him that complainant went out for a while. Yet when respondent called complainant, to his surprise, complainant had already left for the bus terminal to Sibugay province.<sup>9</sup>

Then on, respondent proceeded with his other cases and dealings without hearing anything from complainant. On April 14, 2015, respondent messaged complainant to ask about the signed judicial affidavit which he would need for the April 15 hearing.<sup>10</sup> The messages<sup>11</sup> between complainant and respondent would reveal that complainant instead prepared a manifestation/motion<sup>12</sup> but had yet to accomplish the judicial affidavit the following week.<sup>13</sup>

In the April 15 hearing, no judicial affidavit of witnesses was submitted but only a manifestation and motion filed directly by complainant. Consequently, the case was dismissed. The April 15, 2015 Order<sup>14</sup> reads:

Neither were judicial affidavits submitted and instead, a manifestation/motion relating to direct examination schedule was filed directly by the [complainant] who states that he will be unavailable on certain dates in April. After a demand to show cause, the [respondent] explained how he is caught in a dilemma owing to an uncooperative [complainant], who is apparently trapped in a universe where only his imagined rules apply.

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<sup>6</sup> *Rollo*, pp. 3, 47.

<sup>7</sup> *Id.* at 46-48.

<sup>8</sup> *See id.* at 69.

<sup>9</sup> IBP Report and Recommendation, pp. 2-3.

<sup>10</sup> *Id.* at 3.

<sup>11</sup> *Rollo*, pp. 4-5, 34.

<sup>12</sup> *Id.* at 76-77.

<sup>13</sup> *Id.* at 4-5.

<sup>14</sup> *Id.* at 20. Penned by Presiding Judge Carlo Martin R. Alcala of Municipal Trial Court in Cities, Branch 3, Zamboanga City.

WHEREFORE, the manifestation/motion of the [complainant] is merely NOTED, but deemed premature. For non-compliance with orders and as spelled out under Section 10 of the Judicial Affidavit Rule, the case is DISMISSED.

....

IT IS SO ORDERED, this 15 April 2015.<sup>15</sup>

This prompted complainant himself to file a Motion for Reconsideration<sup>16</sup> and Affidavit of Merit<sup>17</sup> on May 15, 2015. Said motion was denied due course in the June 10, 2015 Order<sup>18</sup> for being filed out of time and for being insufficient in form and substance. This was followed by complainant's filing of a Notice of Appeal,<sup>19</sup> which was likewise denied in the July 3, 2015 Order.<sup>20</sup>

On October 23, 2015, complainant filed the present disbarment case against respondent for grave misconduct and gross negligence in the performance of duty as public prosecutor.<sup>21</sup> Complainant essentially contends that: (1) Respondent committed grave misconduct by being dishonest and passing the blame on him for being uncooperative in the preparation and execution of the judicial affidavit, which misled the trial court judge in dismissing the case;<sup>22</sup> and (2) Respondent was grossly negligent in his duties as public prosecutor because he filed a one-paged pre-trial summary<sup>23</sup> only on the same day of the first pre-trial schedule on April 15, and he did not consider other legal remedies such as the extension of time for the submission of the judicial affidavit.<sup>24</sup>

In his Comment,<sup>25</sup> respondent maintains that he was neither dishonest nor negligent in his dealings.<sup>26</sup> He exhaustively narrated the course of events and justified the legal measures that he had undertaken regarding complainant's case.<sup>27</sup> He did not lie in open court because he merely informed the court of the surrounding facts, i.e., complainant brought the draft judicial affidavit with him to Manila when he left respondent's office and failed to submit to him the signed judicial affidavit before the April 15 hearing, for which respondent

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<sup>15</sup> *Id.* at 20.

<sup>16</sup> *Id.* at 49-62.

<sup>17</sup> *Id.* at 63-68.

<sup>18</sup> *Id.* at 86. Penned by Presiding Judge Carlo Martin R. Alcalá of Municipal Trial Court in Cities, Branch 3, Zamboanga City.

<sup>19</sup> *Id.* at 87.

<sup>20</sup> *Id.* at 88. Penned by Presiding Judge Carlo Martin R. Alcalá of Municipal Trial Court in Cities, Branch 3, Zamboanga City.

<sup>21</sup> *Id.* at 1-10.

<sup>22</sup> *Id.* at 1.

<sup>23</sup> *Id.* at 78.

<sup>24</sup> *Id.* at 2.

<sup>25</sup> *Id.* at 29-41.

<sup>26</sup> *Id.* at 39-40.

<sup>27</sup> *Id.* at 29-39.

failed to file the required judicial affidavit on said date.<sup>28</sup> Moreover, respondent was not negligent because he even prepared the judicial affidavit just a few days after the arraignment in order to promptly comply with the court order and even pending the results of the mediation, just in case the same would fail. Also, he immediately informed complainant upon receipt of the order dismissing the case and for his guidance.<sup>29</sup> In sum, respondent acted pursuant to his duties as a prosecutor.<sup>30</sup>

Complainant reiterated his arguments in his Reply<sup>31</sup> to respondent's comment. On April 24, 2017, this Court issued a Resolution<sup>32</sup> referring the disbarment case to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation. The mandatory conference before the IBP's Commission on Bar Discipline (IBP-CBD) was set on December 5, 2017.<sup>33</sup> On said date, only respondent appeared, and the parties were directed to file their respective verified position papers with attached documentary evidence, among others.<sup>34</sup>

### **Report and Recommendation of the Integrated Bar of the Philippines-Commission on Bar Discipline**

In the IBP-CBD's Report and Recommendation<sup>35</sup> dated March 15, 2022, it held that the case should be dismissed for lack of merit. Complainant who alleges respondent's transgressions bears the burden of proving said acts to overcome the presumption of innocence on the part of the respondent lawyer. It found that there was no gross negligence because respondent prepared the judicial affidavit ahead of time and even though he did not receive any update regarding the conciliation from complainant.<sup>36</sup> It concluded that complainant failed to discharge his burden of proof. Unjust accusations of dissatisfied litigants must not be permitted to be used in courts to harm the good name of a member of the Bar.<sup>37</sup>

The IBP-CBD recommended the dismissal of the complaint, *viz.* :

**WHEREFORE**, premises duly considered, this instant case against the respondent is hereby **DISMISSED** for utter lack of merit.

RESPECTFULLY SUBMITTED.<sup>38</sup>

<sup>28</sup> *Id.* at 39.

<sup>29</sup> *Id.* at 40.

<sup>30</sup> *Id.* at 29-40.

<sup>31</sup> *Id.* at 124-137.

<sup>32</sup> *Id.* at 154.

<sup>33</sup> *Rollo*, attached folder II, p. 1.

<sup>34</sup> *Id.* at 7.

<sup>35</sup> IBP Report and Recommendation, pp. 1-9. Penned by Commissioner Maria Editha A. Go-Binas.

<sup>36</sup> *Id.* at 4-8.

<sup>37</sup> *Id.* at 8.

<sup>38</sup> *Id.* at 9.

The IBP Board of Governors (IBP-BOG), in its Notice of Resolution dated May 21, 2022,<sup>39</sup> affirmed the findings of the IBP-CBD, it reads:

*RESOLVED, to NOTE and AGREE with the action of the [IBP-CBD] to proceed with the investigation of this case, without being oblivious of the Supreme Court's decision in the cases entitled "Spouses Edwin B. Buffe and Caren M. Silverio-Buffe v. Sec. Raul M. Gonzales et al., A.C. No. 8168, 12 October 2016, and Eduardo R. Alicias, Jr. v. Atty. Myrna V. Macatangay et al., A.C. No. 7478, 11 January 2017 ruling that the IBP has no jurisdiction to entertain a disciplinary case against certain government lawyers if the acts complained of relate to the discharge of the official functions of such lawyers, considering that the Supreme Court had, through a resolution dated 24 April 2017, specifically required the IBP to investigate and submit its recommendation in the instant case; and*

*RESOLVED FURTHER, to APPROVE and ADOPT, as it is hereby APPROVED and ADOPTED, the Report and Recommendation of the Investigating Commissioner to DISMISS the complaint against the Respondent for lack of merit.<sup>40</sup>*

On September 29, 2022, complainant filed a Petition for Review of the IBP Resolution<sup>41</sup> before this Court.

#### Issue

Whether respondent committed grave misconduct and gross negligence in the performance of duty as prosecutor in violation of the lawyer's oath.

#### Our Ruling

This Court adopts the findings of the IBP-BOG. The instant disbarment case is dismissed.

Members of the bar, as partakers in the administration of justice, must observe their four-fold duty. Their first and foremost duty is to the court, then to the public, to the Bar, and to their client.<sup>42</sup> Indiscretions of lawyers that run contrary to their duties, whether engaged in private practice or in the government, make them administratively liable and subject to disciplinary action. It is equally significant to underscore that lawyers are presumed to be innocent unless the complainant successfully discharges his or her burden of proving that the allegations are true by substantial evidence.<sup>43</sup> Failure of the complainant to overcome such presumption merits the dismissal of the

<sup>39</sup> Notice of Resolution, pp. 1–2. Penned by National Secretary Doroteo Lorenzo B. Aguila.

<sup>40</sup> *Id.*

<sup>41</sup> Petition for Review of the IBP Resolution, pp. 1–18.

<sup>42</sup> *Telles v. Atty. Dancel*, 882 Phil. 1, 10 (2020) [*Per Curiam, En Banc*].

<sup>43</sup> *Domingo-Agaton v. Cruz*, A.C. No. 11023, May 4, 2021 [*Per Curiam, En Banc*].

administrative or disbarment complaint,<sup>44</sup> as in this case. Respondent complied with his bounden duty before the court and satisfactorily as a prosecutor.

Procedurally, this Court has established that the jurisdiction over administrative cases against government lawyers, e.g., prosecutors, in relation to acts or omissions committed in the performance of their official functions and duties belongs to the Office of the Ombudsman as the institution exercising administrative supervision over the government lawyers.<sup>45</sup> In *Segura v. Prosecutor Garachico-Fabila*,<sup>46</sup> the administrative complaint against Prosecutor Garachico-Fabila was dismissed for lack of jurisdiction. The acts complained of were connected in the discharge of Prosecutor Garachico-Fabila's official duties as public prosecutor. The authority to discipline belongs to the Secretary of Justice or the Office of the Ombudsman.<sup>47</sup> On this ground alone, the instant disbarment case must have already faced dismissal.

However, considering that this Court referred the case to the IBP for investigation, report, and recommendation in its April 24, 2017 Resolution<sup>48</sup> and following the recent case of *Sismaet v. Atty. Cruzabra (Sismaet)*,<sup>49</sup> if the character of the misconduct similarly affects the government lawyer's qualification as a member of the Bar, shows moral delinquency, or violates the lawyer's oath or the Code of Professional Responsibility, now the Code of Professional Responsibility and Accountability, then the jurisdiction of the IBP to investigate such transgression may be tapped.<sup>50</sup> *Sismaet*<sup>51</sup> further explained "[n]evertheless, the Supreme Court, as the primary authority over the Philippine bar, retains disciplinary jurisdiction over government lawyers."<sup>52</sup>

On this note, the investigation of this disbarment case on the merits before the IBP proceeded. This resulted in the findings of the IBP-CBD as affirmed by the IBP-BOG that complainant failed to substantiate his allegations of grave misconduct and gross negligence against respondent. This Court finds no reason to deviate from the findings of the IBP-CBD and IBP-BOG.

A perusal of the records would show that complainant's allegations failed to pass the crucible test and had fallen short of the required quantum of proof in administrative or disbarment cases, which is substantial evidence or that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion.<sup>53</sup> From among the several pleadings filed by complainant, the attachments, documents or annexes that would prove his allegations and point

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<sup>44</sup> *Id.*

<sup>45</sup> *Alicias, Jr. v. Macutangay*, 803 Phil. 85, 90-92 (2017) [Per J. Carpio, Second Division].

<sup>46</sup> 861 Phil. 11 (2019) [Per J. Inting, Third Division].

<sup>47</sup> *Id.* at 19-20.

<sup>48</sup> *Rollo*, p. 154.

<sup>49</sup> 881 Phil. 577 (2020) [Per J. Gaerlan, Third Division].

<sup>50</sup> *Id.* at 581-582.

<sup>51</sup> 881 Phil. 577 (2020) [Per J. Gaerlan, Third Division].

<sup>52</sup> *Id.* at 584.

<sup>53</sup> *Macaventa v. Atty. Nuyda*, 887 Phil. 818, 824 (2020) [Per C.J. Peralta, First Division].

to respondent's grave misconduct or gross negligence were insufficient, if not inconsequential. Some annexes such as the Orders denying complainant's legal recourse would even show the inclination of the latter to pursue the case on his own rather than to seek proper legal advice or representation. In addition, the exchange of messages between complainant and respondent were merely directly quoted by the former and found no anchor or support. It is a basic tenet that mere allegation is not evidence and is not equivalent to proof.<sup>54</sup>

Taken all together, the records and submissions of both the complainant and the respondent led this Court to a conclusion that respondent fulfilled his duties as a prosecutor from the prompt preparation of the judicial affidavit in anticipation of the possible failure to conciliate, to informing and doing the necessary follow-up with complainant. While respondent sought for an update from complainant a day before the April 15 hearing, the judicial affidavit would have been submitted if complainant had already signed and executed the same. Rather, complainant informed respondent that the judicial affidavit would only be sent days after the April 15 hearing. As to the legal measure taken by respondent and his department during the April 15 hearing, the allegation of dishonesty was inaccurate as he was rather transparent and straight in narrating the events that transpired when asked by the judge to explain his failure to submit the judicial affidavit.<sup>55</sup> For the lack of substantial evidence pointing to respondent's grave misconduct and gross negligence and considering the thorough narration and rationalization of respondent in his Comment, this Court extends its protective arm rather than the disciplining hand and presumes the innocence of respondent.

If only to remind the members of the Bar, practicing in private or in the government, as partakers in the administration of justice, it is Our bounden duty to employ the same diligence and industry to all the cases, simple or complex. Lawyers are first and foremost officers of the court, hence, they are expected to abide by the rules to the best of their ability so that justice will be attained.

**ACCORDINGLY**, the disbarment complaint against respondent Assistant City Prosecutor Edwinlino B. Custodio is **DISMISSED** for lack of merit.

**SO ORDERED.**"

**By authority of the Court:**

*withhold*

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

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<sup>54</sup> *Id.*

<sup>55</sup> *Rollo*, pp. 81-83.

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