

Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

WILSON B. TAN,

Complainant,

A.C. No. 10933

Present:

PERALTA, C.J., Chairperson,  
CAGUIOA,  
CARANDANG,  
ZALAMEDA, and  
GAERLAN, JJ.

- versus -

ATTY. JAMES ROULYN R.  
ALVARICO,

Respondent.

Promulgated:

NOV 03 2020

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X-----X

DECISION

PERALTA, C.J.:

Before this Court is an administrative complaint<sup>1</sup> for disbarment filed by Wilson B. Tan (*complainant*) against respondent Atty. James Roulyn R. Alvarico (*Atty. Alvarico*) on grounds of conflict of interest and betrayal of trust and confidence of client, in violation of the Code of Professional Responsibility.

Complainant is the offended party in Criminal (*Crim.*) Case No. 2014-22652 for theft pending before Branch 44 of the Regional Trial Court of Dumaguete City. Respondent is the counsel for the accused Blas Fier "Buddy" Manco (*Manco*).<sup>2</sup>

Complainant alleged in his Complaint that Atty. Alvarico personally approached and spoke with him, telling him that he can convince his client

<sup>1</sup> Rollo, pp. 1-5.  
<sup>2</sup> *Id.* at 219.

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Manco to settle, provided complainant give him 15 percent (15%) commission. However, complainant countered and told Atty. Alvarico that only 5% shall be his share by way of commission. Complainant and Atty. Alvarico allegedly met several times to discuss this proposal, but no settlement was reached due to the latter's insistence of a 15% commission.<sup>3</sup>

Complainant contends that Atty. Alvarico had violated Rule 15.03 and Canon 17 of the Code of Professional Responsibility, and should therefore be disbarred.<sup>4</sup> In Complainant's Position Paper submitted to the Integrated Bar of the Philippines (IBP) Commission on Bar Discipline (CBD), he claims:

Thus the No Counsel No Dealing Rule as well as the proscription against conflict of interest are violated by respondent.

But what worsened these violations is his attempt at selling his client down-the-drain in order that in his conceived Judas Escariot scheme of settlement, he becomes richer by the 15% agent's commission out from the pocket of his client. Although the attempt at settlement did not materialize, yet the preliminary actuations of respondent in offering himself as an agent of the accuser of his client nonetheless earned for him a betrayal of trust and confidence against his unknowing client. For certainly respondent did not previously inform his client of his becoming a settlement agent on commission of complainant.<sup>5</sup>

In support of his Complaint, complainant presented Atty. Alvarico's Affidavit dated 30 June 2015<sup>6</sup> to prove that the settlement talks were exclusively between himself and Atty. Alvarico, that settlement "fizzled out" due to the alleged insistence of the 15% commission, and that there was conflict of interest and betrayal of trust and confidence by Atty. Alvarico against his client Manco.<sup>7</sup>

Complainant also offered the Transcript of Stenographic Notes (TSN) taken during the hearing of Crim. Case No. 2014-22652 on August 10, 2015 to support his argument that Atty. Alvarico's failure to cross-examine him upon his testimony on the settlement and commission is an implied admission of the charges.<sup>8</sup>

For his part, Atty. Alvarico denied the charges against him<sup>9</sup> for being utterly baseless, fabricated, and unfounded.<sup>10</sup>

Atty. Alvarico admitted he is the counsel for the accused Manco, and that at the behest of his client, has asked complainant if there was any

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<sup>3</sup> *Id.* at 1-2.

<sup>4</sup> *Id.* at 1.

<sup>5</sup> *Id.* at 174.

<sup>6</sup> *Id.* at 218.

<sup>7</sup> *Id.* at 173.

<sup>8</sup> *Id.* at 172-173.

<sup>9</sup> *Id.* at 59-67.

<sup>10</sup> *Id.* at 59.



possibility of amicable settlement.<sup>11</sup> He argues that there is no conflict in this case because he never represented conflicting interest, but solely the interest of his client Manco. No attorney-client relationship was established with complainant as the settlement negotiations were done according to his duty to defend his client Manco, the accused in the criminal case. He negotiated with complainant with the consent, authority and at the instance of his client Manco.<sup>12</sup>

As regards complainant's allegations that Atty. Alvarico was negotiating with him for monetary gain, Atty. Alvarico responded with a clear denial that he never demanded from complainant any commission, arguing that complainant had made up such outrageous statement.<sup>13</sup>

Atty. Alvarico also admitted that at the behest of his client Manco, he asked complainant if there was a possibility of amicably settling the case as Manco was willing to pay for the value of the alleged stolen steering wheel. Complainant then made known his demands, which was for Manco to pay ₱350,000.00 plus ₱50,000.00 for every month of delay. Atty. Alvarico then informed complainant that Manco was only willing to pay for the value of the alleged stolen steering wheel.<sup>14</sup> During this first meeting, Manco was present and never heard Atty. Alvarico asking or negotiating for any commission. In support of this, Atty. Alvarico presented Manco's Affidavit dated February 23, 2017<sup>15</sup> wherein Manco stated:

That, the complaint of Dr. Tan against Atty. Alvarico are again false, untrue, fabricated, and unbelievable because what Dr. Tan failed to state and consider in his complaint is that it was me who asked Atty. Alvarico to approach Dr. Tan and to offer to settle the case;

That, Dr. Tan also failed to state in his complaint that I was present during the first time Atty. Alvarico first approached Dr. Tan after the hearing of my case and that I heard all the demands made by Dr. Tan but I never heard Atty. Alvarico ask for any commission from Dr. Tan;<sup>16</sup>

x x x x

Further, the private prosecutor was present when Atty. Alvarico first approached complainant, as testified by complainant himself and recorded in the TSN:

A: Yes sir. There were three (3) times that the defense counsel approached me. In fact, the first time from this Honorable Court you and I, my lawyer, when we were downstairs, the defense counsel asked me if I could [possibly] accept for settlement

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<sup>11</sup> *Id.* at 246.

<sup>12</sup> *Id.* at 60.

<sup>13</sup> *Id.* at 61-62.

<sup>14</sup> *Id.* at 219.

<sup>15</sup> *Id.* at 225-226.

<sup>16</sup> *Id.* at 225.

which in front of you I told him that I will be charging three hundred fifty thousand (P350,000.00) pesos x x x<sup>17</sup>

Thereafter, Atty. Alvarico met complainant in chance meetings at the Hall of Justice to ask if he had considered his client Manco's offer.<sup>18</sup> Atty. Alvarico argues that every time he would speak with complainant, he would keep his client Manco aware and updated of the demands of complainant. Manco rejected complainant's demands for being grossly excessive and large considering the value of the subject steering wheel is only ₱28,000.00. Hence, no such settlement was ever had.<sup>19</sup>


As regards the cross-examination, Atty. Alvarico explained that he did not cross-examine complainant on the commission-related allegations because such were incredible and outrageous, leaving him shocked and confused. Further, he believed such were immaterial to the issues in Crim. Case No. 2014-22652 concerning the alleged theft of the steering wheel from complainant's car.<sup>20</sup>

Atty. Alvarico posits that complainant filed the Complaint against him as complainant was enraged by the Affidavit<sup>21</sup> he executed in support of Atty. Camelo D. Pidor's (*Atty. Pidor*) defense in the criminal case for threats filed by complainant.<sup>22</sup> He also notes of complainant's propensity for filing cases against persons who get in his way,<sup>23</sup> including court personnel, lawyers and judges.<sup>24</sup>

On November 22, 2017, the IBP Investigating Commissioner recommended the dismissal of the Complaint for failure of complainant to prove by preponderance of evidence the charges against Atty. Alvarico.<sup>25</sup> The Commissioner found that Atty. Alvarico's act of approaching complainant to discuss the possibility of a compromise is not conflict of interest, but actually in the interest of his client. As regards the allegation that Atty. Alvarico asked for a commission on the negotiation, complainant's documentary exhibits proved only that the former was indeed counsel for the accused Manco. Complainant failed to prove such allegation, which was found to be self-serving, apart from being unsubstantiated, and hence deserving of very little weight.<sup>26</sup>

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<sup>17</sup> *Id.* at 221.  
<sup>18</sup> *Id.* at 219-221.  
<sup>19</sup> *Id.* at 62.  
<sup>20</sup> *Id.* at 63.  
<sup>21</sup> *Id.* at 218.  
<sup>22</sup> *Id.* at 220.  
<sup>23</sup> *Id.* at 223.  
<sup>24</sup> *Id.* at 60.  
<sup>25</sup> *Id.* at 245-248.  
<sup>26</sup> *Id.* at 248.



On January 19, 2019, the IBP Board of Governors issued a Notice of Resolution adopting the findings of fact and recommendation of the IBP Commissioner to dismiss the Complaint.<sup>27</sup>

Complainant filed a Motion for Reconsideration dated August 12, 2019<sup>28</sup> reiterating his arguments in his Complaint. In addition, he emphasized that the non-reaction and conduct of Atty. Alvarico was an “admission by silence.” Moreover, Atty. Alvarico’s position paper was belatedly filed without documentary attachments, and therefore should have been considered a mere scrap of paper.<sup>29</sup>

In a letter dated September 27, 2019,<sup>30</sup> the IBP-CBD transmitted to this Court the Notice of Resolution of the IBP Board of Governors, as well as the records of the instant case.

As a preliminary procedural matter, it is fit to note that Bar Matter No. 1645 (*B.M. No. 1645*) dated 13 October 2015 amended Section 12 of Rule 139-B on the Review and Recommendation by the Board of Governors, as follows:

Sec. 12. Review and Recommendation by the Board of Governors.

- a) Every case heard by an investigator shall be reviewed by the IBP Board of Governors upon the record and evidence transmitted to it by the Investigator with his report.
- b) After its review, the Board, by the vote of a majority of its total membership, shall recommend to the Supreme Court the dismissal of the complaint or the imposition of disciplinary action against the respondent. The Board shall issue a resolution setting forth its findings and recommendations, clearly and distinctly stating the facts and the reasons on which it is based. The resolution shall be issued within a period not exceeding thirty (30) days from the next meeting of the Board following the submission of the Investigator's report.
- c) The Board's resolution, together with the entire records and all evidence presented and submitted, shall be transmitted to the Supreme Court for final action within ten (10) days from issuance of the resolution.
- d) Notice of the resolution shall be given to all parties through their counsel, if any.<sup>31</sup>

Hence, a resolution of the IBP Board of Governors, arising from its review of the report of the IBP Investigating Commissioner, and which either recommends the dismissal of the complaint or the imposition of disciplinary

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<sup>27</sup> *Id.* at 243.

<sup>28</sup> *Id.* at 250-251.

<sup>29</sup> *Id.* at 250.

<sup>30</sup> *Id.* at 241.

<sup>31</sup> Bar Matter No. 1645 (October 13, 2015).

action, shall be transmitted to the Supreme Court for final action. B.M. No. 1645 did away with the procedure of filing a motion for reconsideration as well as a petition for review of the resolution of the IBP Board of Governors.<sup>32</sup> Thus, the Court will proceed to take final action on the Complaint.

### The Court's Ruling

The Court finds no cogent reason to depart from the findings and recommendations of the IBP Board of Governors.

An attorney enjoys the legal presumption that he is innocent of the charges against him until the contrary is proved, and that as an officer of the Court, he is presumed to have performed his duties in accordance with his oath.<sup>33</sup> In disbarment proceedings, the quantum of proof is substantial evidence and the burden of proof is on the complainant to establish the allegations in his complaint.<sup>34</sup>

Substantial evidence is defined under Section 6, Rule 133 of the 2019 Amendments to the 1989 Revised Rules on Evidence<sup>35</sup> as “that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion,”<sup>36</sup> while burden of proof is defined under Section 1, Rule 131 as “the duty of a party to present evidence on the facts in issue necessary to establish his or her claim or defense by the amount of evidence required by law.”<sup>37</sup>

The basic rule is that reliance on mere allegations, conjectures and suppositions will leave an administrative complaint with no leg to stand on.<sup>38</sup> Charges based on mere suspicion and speculation cannot be given credence.<sup>39</sup> Thus, failure on the part of complainant to discharge his burden of proof by substantial evidence requires no other conclusion than that which stays the hand of the Court from meting out a disbarment order.<sup>40</sup>

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,<sup>41</sup> which is

<sup>32</sup> *Edgar M. Rico v. Attys. Jose R. Madrazo, Jr., Antonio V.A. Tan and Leonido C. Delante*, A.C. No. 7231, October 1, 2019.

<sup>33</sup> *BSA Tower Condominium Corporation v. Atty. Reyes*, A.C. No. 11944, June 20, 2018; *Zara v. Atty. Joyas*, A.C. No. 10994, June 10, 2019.

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

<sup>35</sup> A.M. No. 19-08-15-SC.

<sup>36</sup> Section 6, Rule 133, 2019 Amendments to the 1989 Revised Rules on Evidence (A.M. No. 19-08-15-SC).

<sup>37</sup> Section 1, Rule 131, 2019 Amendments to the 1989 Revised Rules on Evidence (A.M. No. 19-08-15-SC).

<sup>38</sup> *Elisa Zara v. Atty. Vicente Joyas*, A.C. No. 10994, 10 June 2019.

<sup>39</sup> *Supra* note 33.

<sup>40</sup> *Supra* note 32.

<sup>41</sup> *Rollo*, p. 248.

defined under Section 1, Rule 133 of the Revised Rules on Evidence<sup>42</sup> as “superior weight of evidence on [where] the issues involved lies.”<sup>43</sup> Notably, however, the Court has already clarified in *Reyes v. Atty. Nieva*<sup>44</sup> 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.<sup>45</sup>

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.”<sup>46</sup>

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.<sup>47</sup>

Guided by the foregoing, the Court finds that complainant failed to discharge his burden of proof as he did not establish his claims through relevant evidence as a reasonable mind might accept as adequate to support the conclusion that Atty. Alvarico is guilty of representing conflicting interests and betrayal of trust and confidence reposed in him by his client Manco.

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<sup>42</sup> A.M. No. 19-08-15-SC.

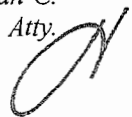
<sup>43</sup> Section 1, Rule 133, 2019 Amendments to the 1989 Revised Rules on Evidence (A.M. No. 19-08-15-SC).

<sup>44</sup> *Reyes v. Atty. Nieva*, 794 Phil. 360 (2016).

<sup>45</sup> *Id.* at 379.

<sup>46</sup> *Id.* at 379-380, citing *Pena v. Aparicio*, 552 Phil. 512, 521 (2007).

<sup>47</sup> *Wilma L. Zamora v. Atty. Makilito Mahinay*, A.C. No. 12622, February 10, 2020; *Jonathan C. Parungao v. Atty. Dexter B. Lacuanan*, A.C. No. 12071, March 11, 2020; *Atty. Pedro B. Aguirre v. Atty. Crispin T. Reyes*, A.C. No. 4355, January 8, 2020.



Complainant alleges that Atty. Alvarico violated Rule 15.03 and Canon 17 of the Code of Professional Responsibility.

Rule 15.03 – “A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts.”

Canon 17 – “A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him.”

Under these rules, a lawyer is prohibited from representing other persons whose interests oppose those of a former client in any manner, whether or not they are parties in the same action or on totally unrelated cases. Conflict of interest exists when a lawyer represents inconsistent interests of two or more opposing parties.<sup>48</sup>

In *Paces Industrial Corporation v. Atty. Salandanan*,<sup>49</sup> the Court emphasized that the rule prohibiting conflict of interests is grounded in the fiduciary obligation of loyalty, recognizing that the nature of the attorney-client relationship is one of trust and confidence of the highest degree:

The rule prohibiting conflict of interest was fashioned to prevent situations wherein a lawyer would be representing a client whose interest is directly adverse to any of his present or former clients. In the same way, a lawyer may only be allowed to represent a client involving the same or a substantially related matter that is materially adverse to the former client only if the former client consents to it after consultation. The rule is grounded in the fiduciary obligation of loyalty. Throughout the course of a lawyer-client relationship, the lawyer learns all the facts connected with the client's case, including the weak and strong points of the case. Knowledge and information gathered in the course of the relationship must be treated as sacred and guarded with care. It behooves lawyers, not only to keep inviolate the client's confidence, but also to avoid the appearance of treachery and double-dealing for only then can litigants be encouraged to entrust their secrets to their lawyers, which is of paramount importance in the administration of justice. The nature of that relationship is, therefore, one of trust and confidence of the highest degree.<sup>50</sup> (Citations omitted)

The case of *Aniñon v. Atty. Sabitsana, Jr.* provides three tests in determining whether there is a conflict of interest:

One test is whether a lawyer is duty-bound to fight for an issue or claim in behalf of one client and, at the same time, to oppose that claim for the other client. Thus, if a lawyer's argument for one client has to be opposed by that same lawyer in arguing for the other client, there is a violation of the rule.

Another test of inconsistency of interests is whether the acceptance of a new relation would prevent the full discharge of the lawyer's duty of undivided fidelity and loyalty to the client or invite suspicion of unfaithfulness or double-dealing in the performance of that duty. Still another test is whether the lawyer would be

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<sup>48</sup> *Paces Industrial Corp. v. Atty. Salandanan*, 814 Phil. 93, 98 (2017).

<sup>49</sup> *Supra*.

<sup>50</sup> *Id.* at 101.



called upon in the new relation to use against a former client any confidential information acquired through their connection or previous employment.<sup>51</sup>

Engaging in negotiations with the adverse party is not *per se* representation of conflicting interests. A survey of jurisprudence shows that negotiation would lead to a violation of the rule on conflicting interests when the respondent-attorney negotiates with the client's adversary in opposition to his client's interest or claim.

In *Celedonio v. Atty. Estrabillo*, the Court found that the respondent-attorney violated Rule 15.03 and Canon 17 when he negotiated with the adversary of his client to settle the case. In that case, the respondent-attorney told the complainant that he would help her out in negotiating with his client on the dropping of charges filed against the complainant's husband. As part of the help he extended to the complainant, the respondent-attorney prepared and filed a motion for extension and motion for postponement of the TRO hearing on behalf of the complainant, the adverse party in the case filed by him for his client. The preparation and filing of those motions run counter with the interest of his client as it would delay the judgment sought by his client in filing the case and deprive the client of a remedy to protect his property rights. The Court rejected the respondent-attorney's explanation that he was forwarding his client's interests in filing those motions as he would extend the chance of getting a settlement with the complainant, which is the end favored by his client. The Court held:

The rules are clear. The relationship between a lawyer and his/her client should ideally be imbued with the highest level of trust and confidence. The legal profession dictates that it is not a mere duty, but an obligation, of a lawyer to accord the highest degree of fidelity, zeal and fervor in the protection of the client's interest. Thus, part of the lawyer's duty in this regard is to avoid representing conflicting interests. Jurisprudence is to the effect that a lawyer's act which invites suspicion of unfaithfulness or double-dealing in the performance of his duty already evinces inconsistency of interests. In broad terms, lawyers are deemed to represent conflicting interests when, in behalf of one client, it is their duty to contend for that which duty to another client requires them to oppose.<sup>52</sup> (Citations omitted)

In *Ong v. Atty. Grijaldo*,<sup>53</sup> the Court considered the negotiations of the respondent-attorney with his client's opponent to be in violation of his duties as a lawyer. In that case, the respondent-attorney approached his client's opponent and offered to delay the hearing of the Batas Pambansa Blg. 22 case in exchange for money. His offer to delay the case would have frustrated his client's interests, to the benefit of his client's opponent. The Court characterized such act to be double-dealing and conflict of interest, and an unethical practice of law, to *wit*:

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<sup>51</sup> *Aniñon v. Atty. Sabitsana, Jr.*, 685 Phil. 322, 327 (2012).

<sup>52</sup> *Celedonio v. Atty. Estrabillo*, 813 Phil. 12, 19-20 (2017).

<sup>53</sup> 450 Phil. 1 (2003).

Respondent's act of propositioning his client's opponent and offering to delay the case against her was intended to benefit the latter. Hence, such act amounted to double-dealing and conflict of interest, and was unethical practice of law. Attorneys, like Caesar's wife, must not only keep inviolate their client's confidence, but must also avoid the appearance of treachery and double-dealing, for only then can litigants be encouraged to entrust their secrets to their attorneys which is of paramount importance in the administration of justice.<sup>54</sup>

In *Capinpin v. Atty. Cesa*,<sup>55</sup> the Court found the respondent-attorney's negotiation with his client's opponent to be a clear violation of Rule 15.03, even if such negotiation was allegedly within the knowledge of his client because of the absence of written consent. The respondent-attorney represented conflicting interests when he assisted his client's opponent in forestalling the foreclosure and settling the loan obligation due to his client for a lesser amount, which was opposed to his client's interest in being able to foreclose and obtain the best amount to cover the loan obligation. The respondent-attorney's admission that he received payment of professional fees from his client's opponent made matters worse for him as it gave an impression that he was being paid for services rendered or to be rendered in favor of such adverse party's interest, which, needless to say, conflicts that of his client's.<sup>56</sup>

Atty. Alvarico argues that there was no attorney-client relationship between him and complainant that would give rise to representation of conflicting interests.<sup>57</sup> However, in *Solatan v. Atty. Inocentes*,<sup>58</sup> the Court found that the respondent-attorney represented conflicting interests even if there was no employment relation offered or accepted because he gave unsolicited advice to the adverse party. To establish the professional relation, it is sufficient that the advice and assistance of an attorney are sought and received in any manner pertinent to his profession. Thus, the absence of a formal engagement would not preclude the finding of an attorney-client relationship, and the absence of such relationship would not preclude the finding of a violation of the rule on conflict of interests.<sup>59</sup>

In the case at bar, during the negotiations between complainant and Atty. Alvarico, the latter did not represent the former's interests because his offer to settle the civil aspect of the case through the payment of the value of the allegedly stolen steering wheel is in the interest of his client Manco who was criminally charged for the theft thereof. The settlement of the civil aspect of the theft case filed against his client was towards his client's interest, and even encouraged by our legal system and aligned with the duty of an attorney. The civil aspect of theft is subject to mandatory Court-Annexed Mediation (*CAM*) and Judicial Dispute Resolution (*JDR*) wherein parties are encouraged

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<sup>54</sup> *Id.* at 12.

<sup>55</sup> 813 Phil. 1 (2017).

<sup>56</sup> *Id.* at 9.

<sup>57</sup> *Rollo*, p. 60.

<sup>58</sup> 503 Phil. 622 (2005).

<sup>59</sup> *Id.* at 631-632.

to reach a settlement and put an end to litigation.<sup>60</sup> Further, a lawyer is encouraged under Rule 1.04 of the Code of Professional Responsibility to encourage his clients to settle a controversy if it would admit of a fair settlement.<sup>61</sup>

In negotiating with complainant, Atty. Alvarico remained loyal to the cause of his client Manco. In contrast to the above-cited jurisprudence wherein the Court found a conflict of interest, the terms of settlement offered by Atty. Alvarico were designed pursuant to the interests of his client Manco, and not to the benefit of complainant. This was acknowledged by Manco himself when he stated in his Affidavit that it was he who asked Atty. Alvarico to reach a settlement with complainant.<sup>62</sup> Moreover, Atty. Alvarico was not remiss in apprising Manco on the updates concerning the negotiations, as admitted by the latter in his Affidavit.<sup>63</sup>

Complainant's allegations that Atty. Alvarico proposed terms unfavorable to his client when he asked for a commission are self-serving and unsubstantiated. The Affidavit of Atty. Alvarico presented by complainant proved nothing more than the negotiations between the parties, and did not in any way show solicitation of commission.

Complainant asserts that since Atty. Alvarico did not cross-examine him on his testimony regarding the offer of commission, Atty. Alvarico's silence must be considered an admission. Section 33, Rule 130 of the Revised Rules on Evidence<sup>64</sup> provides for admission by silence:

An act or declaration made in the presence and within the hearing or observation of a party who does or says nothing when the act or declaration is such as naturally to call for action or comment if not true, and when proper and possible for him or her to do so, may be given in evidence against him or her.<sup>65</sup>

To appreciate the application of the rule on admission by silence, we must determine if such declaration made by complainant called for an action or comment if not true, and if it were possible for Atty. Alvarico to refute the same when such was uttered. Notably, when complainant was testifying on the alleged offer of commission, he was on direct examination for the criminal case of theft filed against Manco. We find Atty. Alvarico's explanation sufficient to negate a finding of admission by silence. Indeed, the imputations made by complainant during direct examination for the criminal case he filed against Manco were shocking, unexpected, and in no way related to the subject matter of theft. Making such statements during direct examination for

<sup>60</sup> A.M. No. 11-1-6-SC-PHILJA.

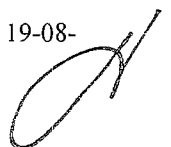
<sup>61</sup> Rule 1.04, Code of Professional Responsibility.

<sup>62</sup> *Rollo*, p. 225.

<sup>63</sup> *Id.* at 226.

<sup>64</sup> A.M. No. 19-08-15-SC.

<sup>65</sup> Section 33, Rule 130, 2019 Amendments to the 1989 Revised Rules on Evidence (A.M. No. 19-08-15-SC).



an unrelated case casts doubt as to whether such declaration called for an immediate action or comment in the course of judicial proceedings. Further, we agree with Atty. Alvarico that it would be immaterial to the issues in the criminal case for theft had he cross-examined complainant on the alleged commission. It would be improper for Atty. Alvarico to respond to the allegations made against him, who was not even the accused in the criminal case being heard.

In *Grefaldeo v. Judge Lacson*,<sup>66</sup> we found respondent Judge's failure to comment on the charges despite numerous opportunities to be an admission by silence.<sup>67</sup> Here, Atty. Alvarico did not remain silent but in fact actively responded to the allegations of complainant in the instant case.

In our resolution of this case, we considered the records forwarded by the IBP Board of Governors, including Atty. Alvarico's position paper despite the alleged belated filing as raised by Complainant in his Motion for Reconsideration.<sup>68</sup> There is no indication in the record if Atty. Alvarico was delayed in filing his position paper on 11 May 2017<sup>69</sup> as he was given fifteen days from receipt of the IBP's Order dated 24 February 2017 to submit his position paper<sup>70</sup> and no proof was proffered on the date of receipt. In any case, even if such were belatedly filed, we find no reason to disregard Atty. Alvarico's position paper. In *Tulio v. Atty. Buhangin*,<sup>71</sup> we found that the respondent-attorney deliberately refused to comply with the IBP's directive to file his position paper without any valid explanation.<sup>72</sup> Here, the IBP did not require such explanation from Atty. Alvarico, but in fact, accepted and considered his position paper.

The Court, therefore, agrees with the IBP Board of Governor's finding that the complaint against Atty. Alvarico should be dismissed for failure of complainant to prove the charges.

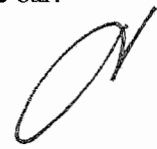
In conclusion, we recall our pronouncement in *Munar, et al. v. Atty. Bautista, et al.*:<sup>73</sup>

Disbarment is the most severe form of disciplinary sanction and, as such, the power to disbar must always be exercised with great caution, only for the most imperative reasons and in clear cases of misconduct affecting the standing and moral character of the lawyer as an officer of the court and member of the bar.

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<sup>66</sup> 355 Phil. 266 (1998).  
<sup>67</sup> *Id.* at 272-273.  
<sup>68</sup> *Rollo*, p. 250.  
<sup>69</sup> *Id.* at 219.  
<sup>70</sup> *Id.* at 162.  
<sup>71</sup> 785 Phil. 292 (2016).  
<sup>72</sup> *Id.* at 301.  
<sup>73</sup> 805 Phil. 384, 398-399 (2017).

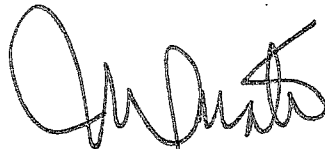


It is well-settled that protection is afforded to members of the Bar who are at times maliciously charged, not just by their clients.<sup>74</sup>

We warn against the filing of malicious suits against members of the bar. As we held in *Tabuzo v. Atty. Gomos*, “the primary purpose of administrative disciplinary proceedings against delinquent lawyers is to uphold the law and to prevent the ranks of the legal profession from being corrupted by unscrupulous practices—not to shelter or nurse a wounded ego.”<sup>75</sup> This Court will only wield our power to disbar when substantial evidence would prove the lack of fitness to engage in the practice of law.

**WHEREFORE**, finding the recommendation of the IBP to be fully supported by the evidence on record and applicable laws, the Court **RESOLVES** to **DISMISS** the case against Atty. James Roulyn R. Alvarico for lack of merit, and consider the same as **CLOSED** and **TERMINATED**.

**SO ORDERED.**



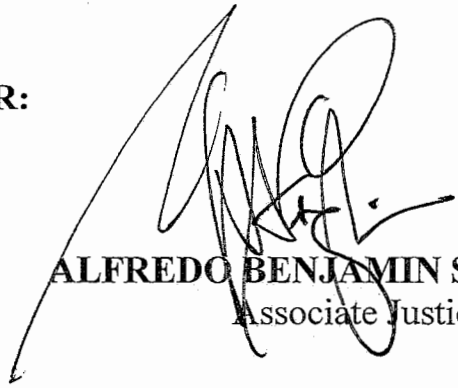
**DIOSDADO M. PERALTA**  
Chief Justice

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<sup>74</sup> *Id.* at 398-399.

<sup>75</sup> *Achernar B. Tabuzo v. Atty. Jose Alfonso M. Gomos*, A.C. No. 12005, July 23, 2018.

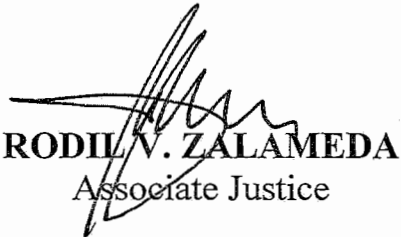
**WE CONCUR:**




**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice



**ROSMARIE B. CARANDANG**  
Associate Justice



**RODIL V. ZALAMEDA**  
Associate Justice



**SAMUEL H. GAERLAN**  
Associate Justice