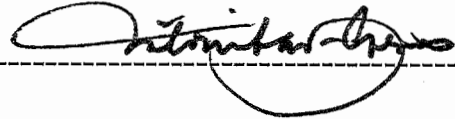


EN BANC

A.M. No. 23-04-05-SC – Re: Illegal Campaign and Activities in the Integrated Bar of the Philippines – Central Luzon Allegedly Perpetrated by Atty. Nilo Divina

Promulgated:

July 30, 2024



X

X

DISSENT

LAZARO-JAVIER, J.:

*“No good deed goes unpunished.”* The phrase evokes much cynicism. Alex Evans, a Pastor for the Second Presbyterian Church, in a sermon last March 20, 2022, purposely said that *“as we each deal with the evils and uncertainties of life, the seemingly predictable and hopeful statements about good and evil become more acerbic and twisted. Bad things happen to good people. Cynicism creeps in. Hence – our phrase for today – ‘no good deed goes unpunished.’”*<sup>1</sup>

He even went further—*“we live in a complex world - and evil is not always punished, and good is not always rewarded. Sometimes bullies seem to win and good guys, and good intentions, finish last.”*<sup>2</sup>

The *ponencia* found Atty. Nilo Divina (Atty. Divina) guilty of Simple Misconduct in violation of Canon II, Sections 1 and 2 of the Code of Professional Responsibility and Accountability (CPRA) and fined him PHP 100,000.00 with stern warning that a repetition of the same or similar offense will be dealt with more severely.<sup>3</sup> This, though Atty. Divina was exculpated from charges of illegal campaigning activities for the election of the Governor of the Integrated Bar of the Philippines (IBP) – Central Luzon Chapter for sponsoring two trips of the IBP – Central Luzon officers. The *ponencia* characterized the issue in this wise:<sup>4</sup>

The Court is now faced with the difficult task of calibrating the guidelines to determine what constitutes misconduct in light of the peculiar facts of the case. Where does the Court draw the line between reasonable

<sup>1</sup> <<https://www.2presrichmond.org/sermons/2022/3/21/is-it-true-no-good-deed-goes-unpunished-psalm-37-romans-51-5>> Last accessed on October 18, 2023 at 11:32am.

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

<sup>3</sup> *Ponencia*, p. 23.

<sup>4</sup> *Id.* at 19.



and acceptable generosity and excessive largesse? When is altruism a mere expression of gratitude and when does it teeter dangerously close to influence peddling?

With due respect, I disagree. On this score, I join the eloquent elucidation of my esteemed colleague Associate Justice Ricardo R. Rosario on why penalizing “overgenerosity” is not only problematic, but more important, unsupported by existing Rules.

I expound.

**Penalizing “excessive generosity” is problematic and beyond the realm of control**

Penalizing the supposed “excessive generosity” of Atty. Divina is problematic on two levels.

**First.** Punishing generosity goes against tenets of natural law. For as human beings, our very conscience and moral fibers are organically wired to link punishment only to wrongdoings, *never* for good deeds. It is simply illogical and unreasonable. The problem here is that the *ponencia* aims to classify too much generosity as a wrong that must be deterred in the legal profession.

But generosity is an unequivocal concept and quality. It is not susceptible to any perverse interpretation which might justify punishment. A person either gives gratuitously or onerously. If the former, it is called “generosity” and the person exhibiting such quality is surely deserving of high praise and regard. If the latter, however, depending on the circumstances, it would be called a fair trade or plain bribery or some other name, but certainly not generosity. For generosity elicits only a sense of goodness and selflessness. It may differ in degree, but the fact that it is a virtue does not change.

Before generosity, then, may be colored and christened another name, context is paramount. In this case, consider this big picture:

**Atty. Divina has been giving contributions to the IBP Central Luzon and its various chapters since 2015,<sup>5</sup>** even when he was not a member of the IBP Tarlac Chapter. From his own Summary of Schedule of Sponsorships and Donations,<sup>6</sup> he admits contributing a total of PHP 11,394,000.00 from 2012-2023 to the IBP in its entirety. Consider, too, that

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<sup>5</sup> *Rollo*, p. 60.

<sup>6</sup> *Id.* at 267-268.

the traceable inception of his contribution dates at least a decade before rumors of his candidacy in the IBP elections surfaced.

What reason could have motivated him to make donations to various IBP chapters, to which he was not even a member at the time, and over a span of 10 years no less, other than generosity? Is the Court ready to believe that for every contribution made to a specific IBP chapter for the past 10 years, Atty. Divina intended to plant seeds for his eventual possible election as an officer in said chapter? Surely not.

**He randomly gave financial aid to various people and institutions** over the course of many years, even to persons he did not personally know. On his list of donations,<sup>7</sup> Atty. Divina records donations given to 25 different schools and to 35 other organizations totaling PHP 56,722,672.47 from 2012-2023. Perusing each entry made in his register of donations whose recipients varied in identity and purpose, on what basis do we make the assumption that the contributions made were impelled by motives other than magnanimity? If not magnanimity, then what?

The Anonymous Complaint subject of this case asked the same question vis-à-vis Atty. Divina's sponsorship of the IBP Central Luzon's trips in Balesin resort in 2022 and in Bali, Indonesia in February 2023. Coming up with its own answer, it says, "[t]he answer is very clear, Your Honors. Atty. Divina is engaging in illegal, prohibited and corrupt campaigning in his bid to become IBP Central Luzon Governor, and which he will use as a stepping stone to become IBP National President."<sup>8</sup>

But, is it really clear? Further consider:

**Atty. Divina never expressed his intention to run for an IBP position.**<sup>9</sup> Rumors and "open secrets" can, by no stretch of imagination, be equated with a formal declaration of intent. Consequently, if he was never a candidate in the first place, what would he have campaigned during the said trips?

**On the contrary, there is notably a uniform assertion, save from the *Anonymous Complaint*, that the Balesin trip and Bali, Indonesia trip were legitimate team-building activities** of the IBP Central Luzon. Thus, Atty. Jocelyn Z. Martinez-Clemente (Atty. Clemente), author of *My Story*, herself stated, "The Balesin trip was a regional team building activity. Aside from the regional officers, there were also chapter officers...to say now that such trip

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

<sup>8</sup> *Id.* at 1.

<sup>9</sup> *Id.* at 255.

was meant to build patronage for Dean Divina is to undermine the team building purpose of the activity and puts Dean Divina in a very bad light.”<sup>10</sup>

Submitted as evidence, too, are numerous pictures from the team building activities, illustrating how the participants were divided into groups and performed different activities to foster stronger camaraderie among the officers of the IBP. Notably absent were any depictions of the alleged illegal campaigning activities which purportedly transpired during the said events.

**Atty. Divina is the Legal Adviser of IBP Central Luzon**, hence, an officer thereof. On the other hand, the team-building activities held in Balesin and Bali, Indonesia were precisely for the officers of the IBP Central Luzon. His presence during the said trips, then, obviously is a matter of course.

**This is not the first time Atty. Divina sponsored out-of-town and out-of-the-country trips.** That he sponsored the IBP Central Luzon’s team-building activities in Balesin and Bali, Indonesia is not out of the ordinary. In the past, he also treated the University of Santo Tomas (UST) Faculty of Civil Law, both faculty and bar passers, to trips in the Philippines and abroad including Boracay, Hongkong, United Arab of Emirates, and Taiwan.<sup>11</sup> This year, he treated the 2023 Bar Examinations passers from UST to an all-expense-paid trip to Japan. Applying the logic of the Anonymous Complaint, does it also mean that Atty. Divina had illegal, prohibited, and corrupt motives when he brought the UST Faculty of Civil Law of which he is already the Dean, abroad? If yes, in exchange for his sponsorship, what could he have gained from freshly-minted lawyers who are simply ecstatic to have passed the Bar?

*Sans* evidence, there is no basis to impute ill-motive on the part of Atty. Divina when he suggested Balesin as the venue for the IBP Central Luzon Chapter’s team-building activity during its regional meeting and volunteered to cover the expenses for the same. To be sure, meetings are, most often than not, imbued with spontaneity. Ideas and suggestions flow easily amidst lively exchange in the spur of the moment. The presumption remains to be good faith and regularity in the conduct of our respective businesses. So must this presumption govern in this context, *sans* evidence to the contrary.

Here, the *ponencia* itself recognized Atty. Divina’s contributions as acts of generosity and nothing more. For they were given with absolutely no strings attached. In fine, they were pure acts of selflessness and gratuity, completely undeserving of punishment.

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

<sup>11</sup> *Id.* at 128.

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For another, generosity cannot be measured. No standard exists to measure a person's generosity. When is it too much? Conversely, can generosity ever be too little? The *ponencia*, for one, did not provide a clear standard on what constitutes "excessive generosity." Although excessiveness is generally defined as "greater than what is usual or proper" or "exceeding the proper or reasonable limit or measure,"<sup>12</sup> the *ponencia* did not cite any guideposts on what is "usual," "proper," or "reasonable" under the circumstances. Neither can such concept be gleaned from the Code of Professional Responsibility and Accountability (CPRA), in any other rule, or even in jurisprudence. It thus begs the question, what is considered "excessive generosity"? For that matter, if the Court is pushed to define this, I could not imagine how the definition would be.

To illustrate, in 2006, self-made multibillionaire John Gokongwei, Jr. donated half of his fortune, about PHP 20 billion, to charity to mark his 80<sup>th</sup> birthday and his holding company's 50<sup>th</sup> anniversary.<sup>13</sup> He said: "*I will devote the rest of my life to philanthropy. Life has been good to me, and I want to give back the blessings I have received...Others say life begins at 40. I say life is again beginning at 80 for me. And it can only get better.*"<sup>14</sup>

Picture MacKenzie Scott, ex-wife of Amazon.com CEO Jeff Bezos, saying in her blog post that: "*she has practically given away \$4.2 Billion of her fortune in the past four months. Scott said she accelerated her charitable donations because of the "wrecking ball" effect of the coronavirus, which she noted has also "substantially increased the wealth of billionaires."*"<sup>15</sup> Scott is among those billionaires whose fortunes have soared since the pandemic first crippled the U.S. in March. Her wealth is now valued at more than \$60 Billion, representing a boost of almost \$24 billion since the start of the year, according to the Bloomberg Billionaires Index.<sup>16</sup>

Is it "excessive generosity" when John Gokongwei, Jr. donated 50% of his ₱40 billion wealth? Did MacKenzie Scott practice "excessive generosity" when she donated about 7% of her total wealth? Is PHP 11,394,000.00 "excessive generosity"?

I respectfully submit, that if the Court must really determine whether generosity is excessive, the capacity of the giver must also be considered. For what is excessive for one, may be perfectly reasonable for another. While PHP 11,394,000.00 is in no way negligible, it may be an amount that Atty. Divina is comfortable parting with if only to express his support to the IBP of which he is a member.

<sup>12</sup> Black's Law Dictionary, p. 670 (4<sup>th</sup> Ed.).

<sup>13</sup> <<https://www.philstar.com/headlines/2006/08/13/352597/gokongwei-patriarch-leaves-half-fortune-charity>> Last accessed on October 18, 2023 at 11:32am.

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

<sup>15</sup> <<https://www.cbsnews.com/news/mackenzie-scott-donates-charity-4-2-billion/>> Last accessed on October 18, 2023 at 11:32am.

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

The point is, generosity is a relative altruistic feeling which cannot be compelled, much less regulated. This is a realm beyond our control. Whether a person donated PHP 1.00 or his or her entire fortune, who are we to judge whether that is enough or too much, much less penalize the act? Again, it would be a completely different matter if the person “donates” his or her fortune as part of an immoral, illegal, or unlawful transaction, which is, to reiterate, absolutely not the case here.

Here, we have a lawyer, who believes in the objectives of the IBP. He tried to help by donating about PHP 11,394,000.00 over the course of many years. Yet, unbelievably, we punish him? Undoubtedly, repaying generosity, excessive or otherwise, with retribution will foster cynicism throughout the profession. For in effect, the Court is saying that anyone blessed enough with tremendous magnanimity must be motivated only with self-interest and nothing else. Surely, this is not what the *ponencia* intends to perpetuate – this cannot be the presumption under which we wish the legal community to operate.

For it creates a situation where lawyers would, for prudence, no longer choose to be generous out of fear of administrative liability. Conversely, the IBP and its officers would no longer be receptive of its members’ generosity for fear of appearing to condone impropriety. Ultimately, this situation largely leads to tremendous opportunity loss for the legal community, keeping in mind the resources that could have been shared between its members and the IBP which would have otherwise led to the realization of beneficial programs and projects.

**Second**, the *ponencia*, in deterring further acts of gratuity from Atty. Divina, interferes with the latter’s right to freely associate with other members of the legal profession. The Constitution itself guarantees each person’s right to freedom of association.<sup>17</sup> Sans any showing that the association is for any illegal or immoral purpose, the State and the courts may not unduly intrude into such freedom.

The giving and receiving of assistance, whether monetary or in kind, is intimately related with the right to freely associate guaranteed by the 1987 Constitution. Stated differently, Atty. Divina’s act of donating money to the IBP is an exercise of his right to freely associate with and support the other members of the legal profession. On this score, the Court recognizes that the right to freely associate in any organization, association, or group is but one of the many ways by which persons can exercise the right to speak and the right to freely express themselves in order to advance their advocacies, beliefs, and ideas.<sup>18</sup>

<sup>17</sup> CONSTITUTION (1987), art. III, sec. 4.

<sup>18</sup> *Calleja v. Executive Secretary*, G.R. Nos. 252578, 252579, 252580, 252585, 252613, 252623, 252624, 252646, 252702, 252726, 252733, 252736, 252741, 252747, 252755, 252759, 252765, 252767, 252768,

Further, in *Roberts v. United States Jaycees*,<sup>19</sup> it was explained:

In one line of decisions, the Court has concluded that choices to enter into and maintain certain intimate human relationships must be secured against undue intrusion by the State because of the role of such relationships in safeguarding the individual freedom that is central to our constitutional scheme. In this respect, freedom of association receives protection as a fundamental element of personal liberty.

Here, the IBP, albeit a “*sui generis public institution*”<sup>20</sup> comprised of lawyers, still chooses its officers via election—a process that is political in nature. It comes as no surprise, therefore, that candidates vying for an IBP post often hail from differing factions, each with their respective ideals, advocacies, and campaigns. This is not reprehensible, but commendable. For it means like-minded lawyers are bound by common goals, aspirations, and hopes. If they unite themselves together to serve the IBP, this would surely be a laudable feat. And it would completely be within their right to choose their own nominees. How they do so, short of being illegal, unlawful, or immoral, is beyond the power of the Court to interfere with. For that is part and parcel of their constitutionally-guaranteed right to freedom of association.

Relevantly, therefore, Atty. Divina cannot be disallowed from extending his generosity towards the IBP and the other members of legal profession nor barred from associating with them. Lawyers may congregate amongst themselves, discuss their ideas for the IBP, any of its chapters, or for themselves as long as they are not impelled by any illegal purpose.<sup>21</sup>

More so here because there is no substantial evidence that Atty. Divina made donations to the IBP to **influence any matter** pending before it. The *ponencia* even made an explicit declaration that Atty. Divina’s act of “sponsoring the trip to the Balesin Island Club . . . and Bali, Indonesia of the IBP Central Luzon Officers” was not “relative to any elections in the IBP.”<sup>22</sup> Too, the *ponencia* was not able to point to any other proceeding in which Atty. Divina has any vested interest, and which may be affected by members of the IBP who have benefited from Atty. Divina’s generosity. As such, there is simply no basis to say that Atty. Divina’s generosity “casts serious doubts as to the IBP’s integrity, impartiality, and independence.”<sup>23</sup>

The *ponencia*, in its current iteration, punishes a lawyer who has, thus far, maintained a sterling reputation. Importantly, since his admission to the Philippine Bar, Atty. Divina has not been found guilty of any administrative

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16663, 252802, 252809, 252903, 252904, 252905, 252916, 252921, 252984, 253018, 253100, 253118, 253124, 253242, 253252, 253254, 254191 & 253420, December 7, 2021 [Per J. Carandang, *En Banc*].

<sup>19</sup> 468 U.S. 609.

<sup>20</sup> *Tabuzo v. Gomos*, 836 Phil. 297 (2018) [Per J. Gesmundo, Third Division].

<sup>21</sup> See CONSTITUTION (1987), art. III, sec. 8.

<sup>22</sup> *Ponencia*, p. 16.

<sup>23</sup> *Id.*, p. 22.

wrongdoing. Yet the *ponencia* found it proper to penalize him for unconditionally sharing the fruits of his labor, despite the absence of any evidence regarding his supposedly improper intent.

Notably, Atty. Divina is widely known in the legal community for his distinct generosity. Countless people, outside and inside the IBP, have in the past graciously received his donations, small or otherwise. To be sure, he gives them openly, usually in celebration of some special occasion, *as here*.

Interestingly, the author of the *Anonymous Complaint* seems to be himself or herself a recipient of such donations. Even *My Story* author Atty. Clemente, who now says, “By and large and in hindsight, the dynamics within IBP [Central Luzon]..., leads one to think that every step taken is geared towards the election of Dean Divina as Governor,”<sup>24</sup> admitted receiving Christmas gifts and Sodexo gift certificates worth PHP 50,000.00 from Atty. Divina.<sup>25</sup> Yet, at the time, she did not think much of it, precisely because there was nothing out of the ordinary when it comes to Atty. Divina and his natural trait of generosity.

Everything would have been completely different were Atty. Divina reputed otherwise. His sudden change in behavior would have merited not only raised eyebrows but well-grounded suspicion, especially if his sudden generosity timely jived with the election for IBP officers. But this is not the case here.

Nevertheless, for Atty. Divina to be held administratively liable, there must be an act that constitutes an offense. Even then, to be punishable, it must not only be contradictory to existing laws and jurisprudence, it must also be motivated by bad faith, fraud, dishonesty or corruption.<sup>26</sup> For an accusation of bad faith must be proven; it cannot be presumed, and that burden rests on the party who pleads it.<sup>27</sup> As the *ponencia* wrote, there is no semblance of illegal activities on part of Atty. Divina. Neither did the *Anonymous Complaint* detail by evidence that his acts were motivated by bad faith, fraud, dishonesty or corruption. It is merely presumption after presumption of malice unfairly directed to him. “*Wow, he is giving this much, this means he is up to something...*”

Surely, we cannot acquiesce to this travesty. We cannot condemn a person on bare allegations. Basic is the rule that mere allegation is not evidence and is not equivalent to proof as it is essentially self-serving and devoid of any evidentiary weight.<sup>28</sup>

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<sup>24</sup> *Rollo*, p. 294.

<sup>25</sup> *Id.* at 5.

<sup>26</sup> *Rallos v. Judge Gako, Jr.*; 398 Phil. 60 (2000) [Per J. Panganiban, Third Division].

<sup>27</sup> International Labour Organization Website <[https://www.ilo.org/dyn/triblex/triblexmain.showList?p\\_lang=en&p\\_keyword\\_id=712](https://www.ilo.org/dyn/triblex/triblexmain.showList?p_lang=en&p_keyword_id=712)> Accessed on February 21, 2024 at 8:30am.

<sup>28</sup> *Menez v. Status Maritime Corp., et al.*, 839 Phil. 360, 369 (2018) [Per J. Caguioa, Second Division].



Despite this history, it is only now that Atty. Divina's contributions are being maligned as part of an allegedly grand political ploy. From the facts, it is apparent that allegations against Atty. Divina began to surface only because of the apprehensions, *nay*, paranoia that he "wants to become the IBP Central Luzon Governor as a stepping stone to become the IBP National President".<sup>29</sup>

Consequently, his consistent contributions to the IBP were baselessly tagged as part of his "illegal campaign activities" to win over said position. But how can Atty. Divina be engaged in campaign activities, whether legal or illegal, if, *in the first place*, he never had any intention to vie for any IBP position? It bears reiterating that the *ponencia* itself acknowledged, "there is no concrete evidence that indeed Atty. Divina has or had any intention of running for Governor of IBP – Central Luzon"<sup>30</sup> and any allegations to such effect were based on hearsay, conjectures, or surmises. Atty. Divina himself assured that "despite the encouragement of his peers and his intention of helping IBP, he could not handle the demands of being an IBP Governor" because of his heavy responsibilities as Dean of the University of Santo Tomas Faculty of Civil law, law professor in various universities and colleges, and as Managing Partner of his law firm.<sup>31</sup>

Clearly, therefore, the very premise on which the entire complaint against Atty. Divina was grounded contains not even an ounce of truth. If at all, the circumstances pieced together make it obvious that Atty. Divina's generosity was cast under a malicious light only to mudsling. The Anonymous Complaint was evidently politically-tainted and the allegations, *sans* supporting evidence, deserve no credence. It is a mere scrap of paper not worthy of any consideration and from which no consequence ought to spring. Even as a mere incident thereof, why must we find fault in a kind soul who was very clearly politically-targeted by ill-meaning detractors—detractors whose claims must be taken with a grain of salt?

In fine, I humbly submit that the Court should not disincentivize generosity. More important, we should not breathe life into the adage that "no good deed goes unpunished." For in the end, it will be the IBP which will be deprived of the voluntary generosity of its members.

Are we to push and bully a kind soul whose actions, generous at that, is being second-guessed as to his intentions?

Utilitarian philosopher John Stuart Mill stated "*Let not any one pacify his conscience by the delusion that he can do no harm if he takes no part, and forms no opinion. Bad men need nothing more to compass their ends, than*

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<sup>29</sup> *Draft ponencia*, p. 1.

<sup>30</sup> *Id.* at 16.

<sup>31</sup> *Id.* at 5.

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*that good men should look on and do nothing. He is not a good man who, without a protest, allows wrong to be committed in his name, and with the means which he helps to supply, because he will not trouble himself to use his mind on the subject.”*<sup>32</sup>

While I do believe that “*the only thing necessary for the triumph of evil is for good men to do nothing,*” it is equally true that our society will crumble if good men are not defended, encouraged, and allowed to flourish.

***The newly crafted guidelines  
may not validly apply  
retroactively***

For the first time here and now, the latest iteration of the *ponencia* provided the following parameters.<sup>33</sup>

Thus, if an individual is willing to contribute, donate or volunteer to further the efforts of the IBP, it must be tempered by the nature and purpose of the activity which in itself should be in furtherance of the goals and objectives of the IBP and for the direct benefit of its members and should not solely be for the interest, use and enjoyment of the officers of the IBP.

In the present case, Atty. Divina does not deny that he sponsored the trips of the IBP-Central Luzon Officers to Balesin Island Club and to Bali, Indonesia. Atty. Divina characterizes these as acts of generosity to support the IBP and its role in the legal profession. Notably however, these activities sponsored by Atty. Divina were primarily and solely for the benefit of the officers of IBP-Central Luzon. It does not support a particular activity of the IBP for the benefit of its constituent members nor does it further a purpose or objective of the IBP.

Although Atty. Divina claims his intentions in supporting the IBP and its activities are out of generosity, the sponsorship of the trips of the IBP-Central Luzon Officers to Balesin Island Club and to Bali, Indonesia crossed the borders on excessive and overstepped the line of propriety.

With utmost respect, this cannot be done. Albeit the Court is fully empowered to issue guidelines regulating the conduct of members of the legal profession, the same ought to not be applied retroactively, *i.e.*, to acts committed before the existence of this interpretation of rules. This is a basic tenet of fair play equally applicable to administrative cases, especially where what is at stake is no trivial rule but one prescribing a penalty.<sup>34</sup> In such a case, it is imperative that the people affected by this rule be first informed of its existence before being bound thereby.

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<sup>32</sup> <[https://www.openculture.com/2016/03/edmund-burkeon-in-action.html#google\\_vignette](https://www.openculture.com/2016/03/edmund-burkeon-in-action.html#google_vignette)> Accessed on February 21, 2024 at 9:00am.

<sup>33</sup> *Ponencia*, pp. 21–22.

<sup>34</sup> See *DENREU v. Secretary Abad*, G.R. No. 204512, January 19, 2021 [Per C.J. Peralta, *En Banc*].

This is exactly why the presumption is in prospectivity of laws<sup>35</sup> and the Constitution itself prohibits the enactment of *ex post facto* laws,<sup>36</sup> which *Salvador v. Mapa, Jr.*<sup>37</sup> eloquently defined as follows:

An *ex post facto* law has been defined as one — (a) which makes an action done before the passing of the law and which was innocent when done criminal, and punishes such action; or (b) which aggravates a crime or makes it greater than it was when committed; or (c) which changes the punishment and inflicts a greater punishment than the law annexed to the crime when it was committed; or (d) which alters the legal rules of evidence and receives less or different testimony than the law required at the time of the commission of the offense in order to convict the defendant. This Court added two (2) more to the list, namely: (e) **that which assumes to regulate civil rights and remedies only but in effect imposes a penalty or deprivation of a right which when done was lawful**; or (f) that which deprives a person accused of a crime of some lawful protection to which he has become entitled, such as the protection of a former conviction or acquittal, or a proclamation of amnesty.

The constitutional doctrine that outlaws an *ex post facto* law generally prohibits the retrospectivity of penal laws. Penal laws are those acts of the legislature which prohibit certain acts and establish penalties for their violations; or those that define crimes, treat of their nature, and provide for their punishment. . . .<sup>38</sup> (Citations omitted, Emphases supplied)

Though what the *ponencia* sought to apply to past acts here are mere guidelines and not a statute, the rationale behind the proscription against *ex post facto* laws finds equal relevance in this case.

In fact, the CPRA itself provides an exception to its retroactive application, i.e., when to do so would work injustice:

#### GENERAL PROVISIONS

SECTION 1. Transitory provision. — The CPRA shall be applied to all pending and future cases, except to the extent that in the opinion of the Supreme Court, **its retroactive application would not be feasible or would work injustice**, in which case the procedure under which the cases were filed shall govern.

In *Dizon v. Trinidad-Radoc*,<sup>39</sup> the Court recognized this rule:

In a Resolution, dated April 11, 2023, the Court *En Banc* approved the Code of Professional Responsibility and Accountability (CPRA), which became effective on May 29, 2023 Section 1 of its General Provisions provides that the CPRA shall apply “to all pending and future cases, **except**

<sup>35</sup> See CIVIL CODE, art. IV.

<sup>36</sup> CONSTITUTION (1987), art. III, sec. 22.

<sup>37</sup> 564 Phil. 31 (2007) [Per J. Nachura, Third Division].

<sup>38</sup> *Id.* at 44–45.

<sup>39</sup> A.C. No. 13675, July 11, 2023 [*Per Curiam, En Banc*].

**to the extent that in the opinion of the Supreme Court, its retroactive application would not be feasible or would work injustice**, in which case the procedure under which the cases were filed shall govern.” The Court finds it apt to apply the CPRA as it would neither be infeasible nor work injustice.<sup>40</sup> (Emphasis supplied; citations omitted)

Injustice means lack of fairness or justice. Respectfully, to render this decision is plain injustice to Atty. Divina. It violates his constitutional right to due process and equal protection of law guaranteed under Section 1, Article III, Bill of Rights of the 1987 Constitution.

It bears stress that before the Court had to reckon with this case, there was no rule against overgenerosity. Overgenerosity was not even a concept then. How was Dean Divina expected to abide by a rule that never existed until now? Corollary to this, it would be the height of injustice to hold him liable and penalize him for failing to follow this guidelines when he did not even know that the same existed.

Clearly, the Court cannot simply create parameters for acts which when done did not exist. Before a transaction otherwise legal can be outlawed or considered administratively punishable, they must fall under the ban of some standards of conduct previously prescribed. Here, as admitted by the *ponencia*, it is now only “*calibrating the guidelines to determine what constitutes misconduct in light of the peculiar facts of the case.*” Any way we put this, the Court as a whole will be branded as targeting a specific individual without just cause. *Res ipsa loquitur*. The thing speaks for itself. We are making a brand-new rule during the resolution of a particular case to which we seek to apply the same. This is not only objectionable but also downright illegal *per se*. Justice Cardozo aptly puts it: “*Law as a guide to conduct is reduced to the level of mere futility if it is unknown and unknowable.*”<sup>41</sup>

Time and again, we have emphasized that lawyers must at all times faithfully perform their duties to society, to the bar, to the courts and to their clients. Is this merely a catch-phrase? Here is Atty. Divina supporting the very institution we so hold dear and yet we deal with him unfairly?

As admitted by the *ponencia*, there was simply no violation or misconduct here. When Atty. Divina made various donations to IBP Central Luzon Chapter, he did so without violating any rule. He lawfully engaged in activities which are not only legal but encouraged by the IBP and the Court as well. To punish him now in the guise of regulating acts but in fact imposes a penalty of fine for acts which when done were lawful is akin to a violation of

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

<sup>41</sup> Edgar A. Prichard, *The Ex Post Facto Aspect of Administrative Law*, 7 Wash. & Lee L. Rev. 19 (1950), citing *SEC v. Chenery Corp.*, 332 U. S. 194, 217, 67 S. Ct. 1575, 1763, 91 L. ed. 1995, 2010 (1947). <<https://scholarlycommons.law.wlu.edu/cgi/viewcontent.cgi?article=4040&context=wlulr>> Accessed on April 13, 2024 at 3:58pm.

the prohibition against *ex post facto law*, whose underlying rationale is honored in Article III, Section 22, Bill of Rights of the 1987 Constitution.

In *Capati v. Atty. Millo*,<sup>42</sup> the Court ordained that actions of a lawyer, if not improper or against the law, does not give rise to any administrative liability. Plain as day, Atty. Divina's actions were neither improper nor against the law. There thus exists no ground to hold him liable, especially not for acts which were lawful when committed.

There being no infraction committed by Atty. Divina, no fault could also be found upon the recipients of his generosity, i.e., Attys. Peter Paul S. Maglalang, Winston M. Ginez, Jocelyn "Jo" M. Clemente, Jade Paulo T. Molo, Enrique V. Dela Cruz, Jr., and Jose I. Dela Rama, Jr.

All told, I vote to **ABSOLVE** Atty. Nilo Divina and Attys. Peter Paul S. Maglalang, Winston M. Ginez, Jocelyn "Jo" M. Clemente, Jade Paulo T. Molo, Enrique V. Dela Cruz, Jr., and Jose I. Dela Rama, Jr. of any administrative liability.

  
**AMY C. LAZARO-JAVIER**  
Associate Justice

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<sup>42</sup> A.C. No. 11882, March 14, 2018.