



Republic of the Philippines  
Supreme Court  
Baguio City

THIRD DIVISION

**WILMA L. ZAMORA,**

Complainant,

A.C. No. 14128

(Formerly CBD Case No. 19-6086)

Present:

**CAGUIOA, J.**

Chairperson,

**INTING,**

**GAERLAN,**

**DIMAAMPAO, and**

**SINGH,\* JJ.**

- versus -

**ATTY. MAKILITO B. MAHINAY,**

Respondent.

Promulgated:

APR 02 2025

MICROBATT

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DECISION

**GAERLAN, J.:**

At the pith of the present administrative case is the Complaint<sup>1</sup> filed by complainant Wilma L. Zamora (Zamora) against respondent Atty. Makilito B. Mahinay (Mahinay), praying for Mahinay's disbarment for committing grave violations of the Code of Professional Responsibility (CPR).

**Factual Antecedents**

The Complaint arose from the intra-corporate disputes involving PJH Lending Corporation (PJH), particularly the two factions of the company: Zamora's faction and that of Rosalie C. Farley (Farley). Mahinay is the counsel of record of the Farley faction in several intra-corporate dispute cases and a

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\* On leave.

<sup>1</sup> *Rollo*, pp. 2-13.

criminal case for Falsification of Public Document and Use of Falsified Document.<sup>2</sup>

Zamora alleges that Mahinay resorted to forum shopping and abuse of court processes which resulted in prolonged delay in the said proceedings. Furthermore, Mahinay also allegedly misled the courts and made unjust accusations against Zamora's lawyers. Thus, in a Complaint dated May 31, 2019, Zamora prayed for Mahinay's disbarment for violation of Canon 1, Rule 1.01, Rule 1.03, Canon 8, Rule 8.01, Canon 10, Rule 10.01, Canon 12 and Rule 12.04 of the CPR.<sup>3</sup>

On the claim of forum shopping, Mahinay filed the following pleadings in the case for Falsification of Public Document and Use of Falsified Document,<sup>4</sup> viz.:

<b>Motion to Suspend Proceedings on the Ground of Prejudicial Question</b> dated October 30, 2015	This was denied by Judge Jenelyn V. Forrosuelo (Judge Forrosuelo), Presiding Judge of MTCC, Cebu City, Branch 4 on January 4, 2016
<b>Motion for Reconsideration</b> dated January 4, 2016	This was denied by Judge Forrosuelo on May 25, 2016.
<b>Manifestation with Motion for Inhibition</b> dated June 9, 2016	Judge Forrosuelo issued an Order of Voluntary Inhibition dated July 22, 2016.
<b>Petition for <i>Certiorari</i> and <i>Mandamus</i></b> dated August 8, 2016	The cases were re-raffled to Judge Francisco Seville (Judge Seville), MTCC Branch 7.
<b>Manifestation with Motion to Suspend the Proceedings</b> dated February 8, 2017	This was denied by Judge Seville in an Order dated November 27, 2017. <sup>5</sup>

On the allegation of abuse of court processes, Zamora claims that Mahinay repeatedly filed motions raising the issue of prejudicial question, viz.:

<b>Motion/Petition to Suspend the Proceedings</b> dated April 6, 2013	The Office of the City Prosecutor of Cebu issued a Resolution dated May 16, 2013 finding probable cause for the crime of Falsification of Public Document and denying the claim of prejudicial question.
<b>Petition for Review and/or Appeal</b> on the Resolution dated May 16,	The Regional State Prosecutor issued a Resolution on February 6, 2014,

<sup>2</sup> *Id.* at 4–5.

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

<sup>4</sup> *Id.* at 346–347.

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

2013	upholding the Resolution dated May 16, 2013 of the City Prosecutor.
<b>Motion for Reconsideration</b> on the Resolution dated February 6, 2014	This was denied in an Order dated April 1, 2014.
<b>Manifestation with Reiteratory Motion to Hold Issuance of Warrant of Arrest and to Suspend Proceedings</b> dated November 11, 2013	It was held that there exists no prejudicial question that would warrant the suspension of the proceedings. <sup>6</sup>
<b>Opposition to the Motion for Issuance of Warrant of Arrest with Prayer for Inhibition</b> dated March 18, 2014	Judge Oscar Andrino (Judge Andrino) inhibited himself and the case was re-raffled to Judge Alberto C. Pita (Judge Pita).
<b>Motion to Suspend Proceedings</b> dated May 7, 2014	This was denied by Judge Pita on May 29, 2014.
<b>Motion for Reconsideration</b> of the Order dated May 29, 2014 and <b>Motion to Suspend the Proceedings for Sixty (60) Days to Allow the Accused to Avail the Remedy of <i>Certiorari</i> under Rule 45</b>	The Motion for Reconsideration was denied but the Motion to Suspend the Proceedings for Sixty (60) Days was granted in an Order dated July 11, 2014. <sup>7</sup>

Zamora also avers that Mahinay was guilty of acts designed to mislead the courts and to deny her from participating in the forensic investigation of the Deed of Assignment dated July 29, 2009.

She recalls that Mahinay filed a Motion for Issuance of an Order Directing the National Bureau of Investigation (NBI) to conduct an expert examination of the genuineness of her signature in the said Deed of Assignment. On June 4, 2015 Judge Pita of the Municipal Trial Court in Cities of Cebu City, Branch 4 issued an Order granting the same. Zamora filed a Motion for Reconsideration which was resolved only on September 26, 2016. However, according to Zamora, Mahinay had already initiated the conduct of the examination as early as April 2016, by presenting to the NBI National Office the Order dated June 4, 2015, without disclosing the pendency of the Motion for Reconsideration. She also accuses Mahinay of “bombard[ing] the NBI with extraneous facts, biased claims, and numerous irrelevant documents that made the examination result less impartial and less credible.”<sup>8</sup> Hence, Zamora claims that she was deprived of her right to participate in the proceedings.<sup>9</sup>

<sup>6</sup> *Id.* at 93–98.  
<sup>7</sup> *Id.* at 347–348.  
<sup>8</sup> *Id.* at 10.  
<sup>9</sup> *Id.*

Lastly, Zamora accuses Mahinay of making unfair and unjust accusations against other members of the bar. She bases this accusation on Mahinay's *Ex Parte* Manifestation dated October 17, 2017, in a previous disbarment case (CBD Case No. 15-4484). The *Ex Parte* Manifestation contained accusations that Zamora and her lawyers namely Atty. Alex L. Monteclar (Atty. Monteclar) and Atty. Mark Philipp H. Opada (Atty. Opada) plotted to assassinate Mahinay, quote:

**2. Respondent however has received reliable information concerning the security threats against his life whereby complainant and her lawyers have allegedly contracted certain personalities from the underground to assassinate him** for a sizable consideration of P2,500,000 with a P500,000 downpayment made and the balance of P2,000,000 upon accomplishment, for allegedly being the "thorn" in their plan to take over the entire of PJH Lending Corporation (whereby complainant and the rest of its stockholders have an ongoing intra-corporate cases, aside from the probate of last will of the founder of the corporation, the late Peter John Holden wherein complainant assisted by her lawyers have asserted being the owner of the one-half and the trustee of the other half of the estate of Peter John Holden).<sup>10</sup> (Emphasis supplied)

Zamora also claims that Mahinay distributed a copy of the *Ex Parte* Manifestation to judges who were not privy to the disbarment case, to the great damage and embarrassment of Atty. Monteclar and Atty. Opada.

In his Answer<sup>11</sup> dated November 22, 2019, Mahinay vehemently denied the charges against him.

On the charge of forum shopping, he counters that the pleadings he filed were in fulfillment of his sworn duty to employ all legal remedies available to save his client from false and unauthorized charges. Since he filed his pleading in the same court after Judge Forrosuelo inhibited, he argues that there was no forum shopping to speak of. He further contends that aside from explaining the justness of the petition for *certiorari* he filed, the Manifestation with Motion to Suspend the Proceedings was intended to implore Judge Francisco to extend judicial courtesy to RTC-Cebu Branch XVIII to allow the said court to first resolve the issue on whether there is a valid basis for the suspension of the proceedings on the ground of pre-judicial question.<sup>12</sup>

As to the accusation that he abused court processes, he claims that the remedies he resorted to were permissible under the Rules. He likewise

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<sup>10</sup> *Id.* at 11.

<sup>11</sup> *Id.* at 186–207.

<sup>12</sup> *Id.* at 198–199.

maintains that advocating for the cause of his client via the remedies under the Rules does not amount to abuse of court processes.<sup>13</sup>

Mahinay also denies having committed acts designed to mislead the courts and maintains that Zamora was not deprived of her right to participate in the forensic investigation of the Deed of Assignment. He recalls that Zamora was represented by counsel during the hearing for the Motion and her lawyers also filed an opposition and a motion for reconsideration of the Order dated June 4, 2015. Mahinay also argues that he did not mislead the courts when he transmitted the Order dated June 4, 2015 to the NBI. Him being the movant, he says that it was Judge Forrosuelo, before her inhibition, who instructed him to immediately receive and facilitate the transmittal of the Order to the NBI. Mahinay thus claims that he has always been fair and transparent in his dealings with his adversities in court.<sup>14</sup>

Finally, on the charge of unfair and unjust accusations against other members of the bar, Mahinay argues that the claims of malice and unfair accusations have been dismissed by the Office of the City Prosecutor of Cebu in a Resolution dismissing Zamora's complaint for libel. Stressing that the threats to his life cannot be dismissed as a joke, he explains that his statement in the *Ex Parte* Manifestation was also a post measure in case something happened to him:

42. When respondent filed his subject manifestation (about threats to his life) before this Honorable Commission, with copies thereof to the courts (where there are active cases between his clients and Zamora), aside from justifying his temporary absence of the proceedings therein, it was also his way of a post measure (when something happened to him) that **Zamora and her lawyers may be considered are persons of interest.**<sup>15</sup> (Emphasis in the original)

After the parties filed their respective pleadings, the Mandatory Conference was held on February 28, 2020. However, only Mahinay appeared and filed his Pre-trial Conference Brief. Zamora failed to appear despite receipt of the Notice of Mandatory Conference on January 30, 2020.<sup>16</sup> Later on, Zamora filed an Urgent Motion to Set Pre-Trial Anew and to Defer the Filing of Position Papers with Entry of Appearance on March 5, 2020.<sup>17</sup> This was denied in an Order dated September 17, 2020. It was held therein that there was no need to conduct a preliminary conference as the issues and facts could be

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<sup>13</sup> *Id.* at 200–203.

<sup>14</sup> *Id.* at 204–205.

<sup>15</sup> *Id.* at 206.

<sup>16</sup> *Id.* at 279–287.

<sup>17</sup> *Id.* at 289–291.

threshed out in the evidence to be presented.<sup>18</sup> The parties then filed their position papers where they reiterated their respective arguments.<sup>19</sup>

### **Recommendation and Report of the IBP-CBD**

On August 4, 2022, the Integrated Bar of the Philippines-Commission on Bar Discipline (IBP-CBD) issued a Report and Recommendation<sup>20</sup> recommending Mahinay's admonition for abuse of court processes and his suspension from the practice of law for six months for making unjust and unfair accusations against other members of the bar. The dispositive reads:

**WHEREFORE**, premises considered, this Office hereby recommends the ADMONITION for Charge B and the SUSPENSION for six (6) months from the practice of law of the respondent for Charge D-unfair and unjust accusations against other members of the bar.

**RESPECTFULLY SUBMITTED.**<sup>21</sup> (Emphasis in the original)

According to Commissioner Josefina Ela Bueno, while the pleadings filed by Mahinay were allowed by the Rules, he took undue advantage of them to prolong the proceedings, thus impeding the speedy disposition of cases and the orderly administration of justice.<sup>22</sup> The Commissioner also found condemnable and unethical Mahinay's statement that "Zamora and her lawyers may be persons of interest" in relation to the alleged threats to Mahinay's life.<sup>23</sup> Thus, the IBP-CBD dismissed the charge of forum shopping and misleading the courts for lack of merit but found Mahinay guilty of abuse of court processes and unfair and unjust accusations against other members of the bar.

On February 8, 2024, Mahinay received a copy of the Resolution of the IBP Board of Governors (IBP-BOG) dated September 2, 2023. The Resolution modified the findings of the Commissioner by dismissing the charge of abuse of court processes while still adopting the penalty imposed for unjust accusations against members of the Bar, to wit:

### **RESOLUTION NO. XXVI-CRM-2023-09-06**

**RESOLVED**, to **APPROVE** and **ADOPT**, as it is hereby **APPROVED** and **ADOPTED**, the Report and Recommendation of the Investigating Commissioner (IC) to-1) **DISMISS** Charge A, for forum shopping, and

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<sup>18</sup> *Id.* at 321–322.

<sup>19</sup> *Id.* at 295–341.

<sup>20</sup> *Id.* at 346–352.

<sup>21</sup> *Id.* at 352.

<sup>22</sup> *Id.* at 350.

<sup>23</sup> *Id.* at 351.

*Charge C, for misleading the courts for lack of merit, and 2) mete out upon respondent Atty. Makilito B. Mahinay the penalty of **SUSPENSION from the practice of law for SIX (6) MONTHS** for Charge D, for unjust accusations against members of the Bar, and*

**RESOLVED, to REVERSE, as it is hereby REVERSED, the Report and Recommendation of the IC as to Charge B for abuse of court processes, and to recommend instead to DISMISS the same for lack of merit, considering that the charges of filing frivolous cases or motions to inhibit were dismissed by the courts concerned.**<sup>24</sup> (Emphasis in the original)

Convinced that the findings of the IBP in its Report are “substantially defective, which may result [in] a miscarriage of justice,”<sup>25</sup> Mahinay filed before the IBP a Motion to Reopen the Proceedings on February 16, 2024, or eight days after his receipt of the above Resolution. However, by January 17, 2024, IBP-CBD transmitted to the Court the Notice of Resolution of the IBP-BOG and the records of the case.<sup>26</sup> No Motion for Reconsideration or Petition for Review was filed as of January 19, 2024.<sup>27</sup>

Mahinay then filed a Manifestation dated February 16, 2024, praying for his Motion to Reopen the Proceedings to be taken into consideration in the final disposition of the case.<sup>28</sup>

### **Ruling of the Court**

While we find Mahinay administratively liable, We adjudicate the matter differently from what the IBP has recommended.

As preliminary matter, We recall that in Resolution dated June 17, 2008, the Court explained the application of the Rules of Procedure in relation to the former Rule 139-B, Section 12 of the Rules of Court. The said Resolution states that when a decision is rendered by the IBP-BOG which exonerates the respondent or imposes a sanction less than suspension or disbarment, the aggrieved party can file a motion for reconsideration within the 15-day period from notice. If the motion is denied, said party can file with the Court a petition for a review under Rule 45 of the Rules of Court within 15 days from notice of the resolution resolving the motion. If no motion for reconsideration is filed, the decision shall become final and executory and a copy of said decision shall be furnished to the Court.

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<sup>24</sup> *Id.* at 344.

<sup>25</sup> *Id.* at 354.

<sup>26</sup> *Id.* at 343.

<sup>27</sup> *Id.* at 516.

<sup>28</sup> *Id.* at 353–355.

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However, Rule 139-B was later amended by Bar Matter No. 1645 (B.M. No. 1645), dated October 13, 2015. 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-BOG.<sup>29</sup> Thus, even without a motion for reconsideration or a petition for review, the Court shall proceed to take final action on the complaint.<sup>30</sup>

When the Code of Professional Responsibility and Accountability (CPRA) expressly repealed Rule 139-B of the Rules of Court, it also dispensed with the filing a motion for reconsideration as well as a petition for review of the resolution of the IBP-BOG, viz.:

*SECTION 25. Issuance of Report and Recommendation by the Investigating Commissioner. — If there is no clarificatory hearing, the Investigating Commissioner shall render a report and recommendation and submit the same to the IBP Board of Governors within a non-extendible period of sixty (60) calendar days from receipt of the last position paper or lapse of the period given.*

In case the Investigating Commissioner sets a clarificatory hearing, the report and recommendation shall be rendered and submitted to the IBP Board of Governors within a non-extendible period of thirty (30) calendar days from the termination of the hearing.

The report and recommendation shall be accompanied by the duly certified transcript of stenographic notes, or in lieu thereof, the audio recording, if any, or the Investigating Commissioner's personal notes duly signed, which should be attached to the records, together with the evidence presented during the investigation. The submission of the report need not await the transcription of the stenographic notes, it being sufficient that the report reproduce substantially from the Investigating Commissioner's personal notes any relevant and pertinent testimonies.

If the hearing is conducted through videoconferencing, the proceedings shall be recorded by the Investigating Commissioner. It shall form part of the records of the case, appending thereto relevant electronic documents taken up or issued during the hearing.

*SECTION 26. Submission of Resolution by the Board of Governors. — The IBP Board of Governors shall have a non-extendible period of ninety (90) calendar days from receipt of the Report and Recommendation of the Investigating Commissioner, within which to submit to the Supreme Court its Resolution adopting, modifying or disapproving such Report and Recommendation.*<sup>31</sup> (Emphasis supplied)

<sup>29</sup> *Tan v. Alvarico*, 888 Phil. 345, 355 (2020) [Per C.J. Peralta, First Division]; *Rico v. Madrazo, Jr.*, 864 Phil. 1, 12 (2019) [Per J. Peralta, *En Banc*].

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

<sup>31</sup> CODE OF PROFESSIONAL RESPONSIBILITY AND ACCOUNTABILITY, Canon VI, Section 25.

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Hence, even without a motion for reconsideration or a petition for review, the Court will proceed to take final action on the Complaint and consider in our final disposition the subject Motion to Reopen the Proceedings.

**On forum shopping, abuse of court processes and misleading the courts**

We depart from the findings of the IBP and hold that Mahinay is guilty of forum shopping and abuse of court processes.

Forum shopping takes place when a litigant files multiple suits, either simultaneously or successively, involving the same parties to secure a favorable judgment. It is apparent if the actions raise identical causes of action, subject matter and issues.<sup>32</sup> There is forum-shopping when as a result of an adverse decision in one forum, or in anticipation thereof, a party seeks a favorable opinion in another forum through means other than appeal or *certiorari*.<sup>33</sup>

From the records of the case, it appears that the Manifestation with Motion to Suspend the Proceedings was filed in MTC-Cebu Branch VII to suspend the proceedings in the criminal cases to wait for the result of the intra-corporate cases between the parties.<sup>34</sup> Similarly, the Petition for *Certiorari* before the RTC prays for “the suspension of the proceedings therein (the criminal cases), until after the commercial court, in the intra-corporate cases. . . has come out with a pronouncement declaring which group is the authorized representative of PJH Lending Corporation.”<sup>35</sup> Clearly, the Manifestation and the Petition for *Certiorari* pray for the same remedy.

Because the two cases involve the same parties, similar issues and the same remedy, the outcome of the two may result in conflicting rulings from two different forums. This is the exact scenario that the prohibition on forum shopping seeks to prevent. While lawyers have the duty to defend their client’s cause, they cannot be allowed to file – willfully or through gross negligence – similar pleadings in multiple courts in an attempt to obtain a favorable judgment. Canon II, Section 23 of the CPRA mandates that lawyers shall not engage in forum shopping:

SECTION 23. *Instituting Multiple Cases; Forum Shopping.* — A lawyer shall not knowingly engage or through gross negligence in forum

<sup>32</sup> *Paz v. Sanchez*, 533 Phil. 503, 510 (2006) [Per J. Carpio, Third Division].

<sup>33</sup> *Polanco v. Cruz*, 598 Phil. 952, 958 (2009) [Per J. Ynares-Santiago, Third Division].

<sup>34</sup> *Rollo*, p. 55.

<sup>35</sup> *Id.* at 30–50.

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shopping, which offends against the administration of justice, and is a falsehood foisted upon the court, tribunal, or other government agency.

In the same vein, lawyers must also not abuse and misuse the legal processes to unduly delay the administration of justice. Canon III, Section 7 of the CPRA states that lawyers must not abuse court processes:

SECTION 7. *Prohibition Against Frivolous Suits and Abuse of Court Processes.* — A lawyer shall not:

- (a) file or encourage the filing of any suit or proceeding not authorized by law or jurisprudence and without any evidentiary support;
- (b) unduly impede the execution of an order or judgment which is warranted;  
or
- (c) abuse court processes.

It has not escaped the attention of the Court that Mahinay filed for inhibition when he failed to obtain favorable judgments. Upon receiving an unfavorable resolution from Judge Forrosuelo in her Order dated May 25, 2016, Mahinay filed a Manifestation with Motion for Inhibition dated June 9, 2016.<sup>36</sup> As a result, Judge Forrosuelo voluntarily inhibited herself from the proceedings.<sup>37</sup> Similarly, when Judge Andrino ruled in accord with the findings of the Office of the City Prosecutor that “there exists no prejudicial question that would warrant the suspension of the proceedings,”<sup>38</sup> Mahinay prayed for his inhibition in his Opposition to Motion for Issuance of Warrant of Arrest with Prayer for Inhibition dated March 18, 2014.<sup>39</sup> Judge Andrino also voluntarily recused himself from the case.<sup>40</sup>

If a party is prejudiced by the orders of a judge, his remedy is not to file for the judge’s inhibition. A party cannot intimidate judges or strongly suggest their inhibition in order to get a favorable outcome. The parties and their lawyers cannot simply impute bias or partiality to a judge whenever they receive an unfavorable judgment for to do so is to disrespect the judicial officer and the judicial system as a whole.

In other words, We cannot allow litigants to shop for a judge more sympathetic to their cause. The filing of frivolous motions for inhibition

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<sup>36</sup> *Id.* at 23–27.

<sup>37</sup> *Id.* at 28–29.

<sup>38</sup> *Id.* at 97.

<sup>39</sup> *Id.* at 99–102.

<sup>40</sup> *Id.* at 103–105.

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constitutes an abuse of court processes that serves to disrupt rather than promote the orderly administration of justice.

While We find Mahinay guilty of willful and deliberate forum shopping and abuse of court processes, We cannot say the same for the charge of misleading the courts.

To recall, Zamora filed a Motion for Reconsideration of the trial court's Order dated June 4, 2015. The said Order granted Mahinay's Motion for Issuance of an Order Directing the NBI to conduct an expert examination. The Motion for Reconsideration was resolved on September 26, 2016. According to Zamora, as early as April 2016, Mahinay had already initiated the conduct of the expert examination by presenting to the NBI National Office the Order dated June 4, 2015, without disclosing the pendency of the Motion for Reconsideration. However, We note that Presiding Judge Pamela Baring-Uy (Presiding Judge Baring-Uy) eventually ordered the release of the June 4, 2015 Order to the NBI on September 26, 2016, and the Questioned Document Report was prepared only on October 13, 2016. Therefore, the Questioned Document Report was prepared only after the Order by Presiding Judge Baring-Uy was issued. Moreover, Zamora presented no substantial proof that she was prejudiced by the preparation of the Questioned Document Report by the NBI. As to the allegation that Zamora was deprived of her right to participate in the forensic investigation of the Deed of Assignment, this, too, was not sufficiently proven. Zamora failed to prove that Mahinay was guilty of bombarding the NBI with extraneous facts, biased claims, and irrelevant documents.

Thus, We find no fault in Mahinay for transmitting Order dated June 4, 2015 to the NBI. Zamora failed to prove that he did so with the intention of misleading the courts.

### **On unjust and unfair accusations against other members of the Bar**

To recount, Mahinay made the following imputations in his *Ex Parte* Manifestation dated October 17, 2017:

2. Respondent however has received reliable information concerning security threats against his life whereby **complainant and his lawyers have allegedly contracted certain personalities from the underground to assassinate him** for a sizable consideration of P2,500,000 with a P500,000 downpayment made and the balance of P2,000,000 upon accomplishment, for allegedly being the "thorn" in their plan to take over the entire of PJH Lending corporation (whereby complainant and the rest of its stockholders

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have an ongoing intra-corporate cases, aside from the probate of last will of the founder of the corporation, the late Peter John Holden wherein complainant assisted by her lawyers have asserted being the owner of the one-half and the trustee of the other half of the estate of Peter John Holden).<sup>41</sup> (Emphasis supplied)

Furthermore, in his Answer dated November 22, 2019, he reiterated his accusations:

41. Respondent would like to believe that Zamora and her counsels are not capable of resorting to harm or death against herein respondent, as he is simply performing his sworn duty as a lawyer. He has duly reported the threats of his life before the police authorities, and had consulted other experts in analysing fake from real threats. After interviewing the source of information and analysing the information gathered, respondent has been told by the experts, that the threats can not be dismissed as a joke.

42. **When respondent filed his subject manifestation** (about threats to his life) before this Honorable Commission, with copies thereof to the courts (where there are active cases between his clients and Zamora), aside from justifying his temporary absence of the proceedings therein, **it was also his way of a post measure (when something happened to him) that Zamora and her lawyers may be considered are [sic] persons of interest.**<sup>42</sup> (Emphasis supplied)

For his defense, Mahinay argues that the above “unjust accusations”<sup>43</sup> in his pleadings can be classified as absolute privileged communication. Thus, he cannot be held administratively liable.<sup>44</sup>

As a rule, utterances made in the course of judicial proceedings, including all kinds of pleadings, petitions and motions, belong to the class of communications that are already absolutely privileged. Being privileged, no action for libel may be founded thereon when pertinent and relevant to the subject under inquiry, however false and malicious such statements may be.<sup>45</sup>

In *Deaño v. Godinez*,<sup>46</sup> We explained that privileged communication “rests upon public policy, ‘which looks to the free and unfettered administration of justice, though as an incidental result it may in some instances afford an immunity to the evil-disposed and malignant slanderer.’”<sup>47</sup>

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<sup>41</sup> *Id.* at 174.

<sup>42</sup> *Id.* at 206.

<sup>43</sup> *Id.* at 523.

<sup>44</sup> *Id.* at 533–536.

<sup>45</sup> *Sison v. David*, 110 Phil. 662, 674–675 (1961) [Per J. Concepcion, *En Banc*].

<sup>46</sup> 120 Phil. 1276 (1964) [Per J. Bautista Angelo, *En Banc*].

<sup>47</sup> *Id.* at 1280, citing *Abbott v. National Bank of Commerce of Tacoma*, 175 U.S., 409, 411.

We stress, however, that this rule is not without qualification.

In *Tolentino v. Baylosis*,<sup>48</sup> the Court aptly held that:

It is the generally accepted rule that counsel, parties, or witnesses are exempted from liability in libel or slander for words otherwise defamatory published in the course of judicial proceedings, **provided that the statements are connected with, or relevant, pertinent or material to, the cause in hand or subject of inquiry** (see 53 C.J.S. 170-171; *Tupas vs. Parreño, et al.*, G.R. No. L-12545, April 30, 1959, and authorities cited therein). For, as aptly observed in one case, “while the doctrine of privileged communications is liable to be abused, and its abuse may lead to great hardships, yet to give legal sanction to such suits as the present would, we think, give rise to far greater hardships.”<sup>49</sup> (Emphasis supplied; citation omitted)

Accordingly, in *Uy v. Depasucat*,<sup>50</sup> We ruled that if the statements made in judicial proceedings are irrelevant to the issues presented therein, the doctrine of privileged communication cannot be invoked. We have stated the test of relevancy, thus:

[. . .] As to the degree of relevancy or pertinency necessary to make alleged defamatory matters privileged the courts favor a liberal rule. The matter to which the privileged does not extend must be so palpably wanting in relation to the subject matter of the controversy that no reasonable man can doubt its relevancy and impropriety. In order that matter alleged in a pleading may be privileged, it need not be in every case material to the issues presented by the pleadings. It must, however, be legitimately related thereto, or so pertinent to the subject of the controversy that it may become the subject of inquiry in the course of the trial. . .<sup>51</sup>

Mahinay’s imputations fail the test of relevancy. His allegations that his life is threatened by the lawyers of Zamora is not in any way material to the issue of his disbarment. Also irrelevant is the charge of Mahinay that Zamora and her lawyers are guilty of committing false accusations against the IBP and the IBP-CBD. This is an entirely separate issue from the present disbarment case.

On this note, We emphasize that notwithstanding the adversarial nature of the legal system, lawyers are still expected not to use intemperate language or to make unkind ascriptions in their pleadings. Language amounting to

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<sup>48</sup> *Tolentino v. Baylosis*, 110 Phil. 1010 (1961) [Per J. Reyes, J.B.L., *En Banc*].

<sup>49</sup> *Id.* at 1013, citing *Santiago v. Calvo*, 48 Phil. 919 (1926) [Per J. Malcolm, *En Banc*], citing *Abbot vs. National Bank of Commerce*, 175 U.S. 409.

<sup>50</sup> 455 Phil. 9 (2003) [Per J. Austria-Martinez, Second Division].

<sup>51</sup> *Id.* at 9, citing *Tolentino v. Baylosis*, 110 Phil. 1010 (1961) [Per J. Reyes, J.B.L., *En Banc*].

discourtesy to a fellow lawyer, if irrelevant to the issues presented by the pleadings, falls outside the purview of privileged communication.

Apart from invoking privileged communication, Mahinay also claims that his statement is proper for it is a lawyer's duty to report life-threatening situations. He cites Canon II, Section 16 of the CPRA, to wit:

SECTION 16. Duty to Report Life-Threatening Situations. — A lawyer who has reasonable grounds to believe that a life-threatening situation is likely to develop in relation to any proceeding in any court, tribunal, or other government agency shall immediately report the same to the proper authorities.

Assuming *ex gratia argumenti*, that his life is indeed under threat, there was no reason for his pleading to contain the said accusations against Zamora and her lawyers. Absent a formal charge, authorities, including the IBP and the Court cannot act on the accusations of Mahinay. While a threat to anyone's life should not be taken lightly and must be reported to the proper authorities, the present disbarment is not the proper forum for such an allegation.

Hence, the imposition of disciplinary liability is warranted. Mahinay's statement that Zamora's lawyers may be considered as persons of interest is uncalled for and defamatory in character as they impeached the good reputation of other members of the bar.

Canon II, Section 2 of the CPRA states that lawyers must act with courtesy, civility, fairness, and candor towards fellow members of the bar:

SECTION 2. *Dignified Conduct*. — A lawyer shall respect the law, the courts, tribunals, and other government agencies, their officials, employees, and processes, and act with courtesy, civility, fairness, and candor towards fellow members of the bar.

A lawyer shall not engage in conduct that adversely reflects on one's fitness to practice law, nor behave in a scandalous manner, whether in public or private life, to the discredit of the legal profession.

The CPRA also prohibits lawyers from using language that is abusive, intemperate, offensive or otherwise improper, whether oral or written:<sup>52</sup>

SECTION 4. *Use of Dignified, Gender Fair, and Child- and Culturally-Sensitive Language*. — A lawyer shall use only dignified, gender-

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<sup>52</sup> CODE OF PROFESSIONAL RESPONSIBILITY AND ACCOUNTABILITY, Canon II, Section 4.

fair, child- and culturally-sensitive language in all personal and professional dealings.

To this end, a lawyer shall not use language which is abusive, intemperate, offensive or otherwise improper, oral or written, and whether made through traditional or electronic means, including all forms or types of mass or social media.

The language of a lawyer must be respectful and restrained to preserve the dignity of the legal profession.<sup>53</sup> Mahinay's statements imputing a crime against his fellow lawyers manifestly falls short of this criterion. Despite the seriousness of his accusations, he chose to voice the same in a wrong forum. His lack of remorse is also apparent in how he reiterates that his accusations are justified.

In accordance with the foregoing, We find Mahinay guilty of violating Canon II, Sections 2 and 4 of the CPRA for his intemperate accusations against other members of the bar.

We now resolve whether to grant or deny Mahinay's Motion to Reopen the Proceedings.

### **On miscarriage of justice and deprivation of due process**

Mahinay prayed for the Court to reopen the proceedings in order to review whether he is mandated to substantiate the ill motives and death threats against him and to allow him to present evidence on those matters.<sup>54</sup>

Mahinay thus filed the Motion to Reopen the Proceedings pursuant to Canon VI, Section 29 of the CPRA:

SECTION 29. *Substantial Defects; Motion to Reopen.* — Any substantial defect in the complaint, notice, answer, or in the proceeding or the Investigating Commissioner's Report which may result in the miscarriage of justice may be raised as an error before the Supreme Court, unless the defect results in the deprivation of the right to due process. In case of the latter, the matter may be brought before the IBP Board of Governors by way of a motion to reopen within sixty (60) calendar days from knowledge.

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<sup>53</sup> *Lubiano v. Gordolla*, 201 Phil. 47, 50–51 (1982) [Per. J. Escolin, Second Division].

<sup>54</sup> *Rollo*, pp. 546–547.

Citing the above provision, Mahinay claims that the ruling of the IBP-CBD, insofar as his six-month suspension is concerned, is substantially defective and that the defect has deprived him of his constitutional right to due process.<sup>55</sup>

We are not convinced. There is neither miscarriage of justice nor deprivation of due process in this case.

The Court will exercise its disciplinary power only after observing due process. In relation to disbarment proceedings, Our ruling in *Natanauan v. Tolentino*<sup>56</sup> is instructive:

Atty. Tolentino, like any respondent in a disbarment or administrative proceeding, is entitled to due process. The most basic tenet of due process is the right to be heard, hence, denial of due process means the total lack of opportunity to be heard or to have one's day in court. As a rule, no denial of due process takes place where a party has been given an opportunity to be heard and to present his case.<sup>57</sup> (Citations omitted)

Jurisprudence holds that the essence of due process in administrative proceedings is the opportunity to explain one's side or seek a reconsideration of the action or ruling complained of. As long as the parties are given the opportunity to be heard before judgment is rendered, the demands of due process are sufficiently met.<sup>58</sup>

In disbarment proceedings, a formal investigation entailing notice and hearing is required. Parties are afforded the reasonable opportunity to be heard and to submit evidence in support of their respective sides.<sup>59</sup> Hence, where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of due process.<sup>60</sup>

Here, the IBP-CBD gave Mahinay all the opportunities to file pleadings and refute the allegations against him. He was present in the hearings for the case. He was also given due notice with regard to the Complaint against him. Nowhere in the evidence presented does it suggest that he lost his right to be heard or to present his defense.

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<sup>55</sup> *Id.* at 521.

<sup>56</sup> 797 Phil. 76 (2016) [Per J. Jardeleza, *En Banc*].

<sup>57</sup> *Id.* at 86.

<sup>58</sup> *Cojuangco, Jr. v. Palma*, 501 Phil. 1, 8 (2005) [*Per Curiam*, *En Banc*].

<sup>59</sup> *Bayonla v. Reyes*, 676 Phil. 500, 513 (2011) [Per J. Bersamin, *En Banc*].

<sup>60</sup> *Tan v. Balon, Jr.*, 558 Phil. 403, 415 (2007) [Per J. Ynares-Santiago, *En Banc*].



Under the circumstances, there is no evidence suggesting the denial of justice. Thus, the grave averment of miscarriage of justice and deprivation of due process cannot be sustained.

### **The proper penalty**

Disbarment and suspension of an attorney are regarded as the most severe forms of disciplinary action which must be imposed with utmost caution.<sup>61</sup> The imposition of an appropriate penalty on an errant attorney involves the exercise of sound judicial discretion based on the facts of the case.<sup>62</sup>

We note that this is not the first time that Mahinay has been penalized by the Court for violating the CPR. In *Luym v. Mahinay*,<sup>63</sup> he was found guilty of misusing rules of procedure and court processes. He was admonished and sternly warned that a repetition of the same or any similar offense shall be dealt with more severely by the Court.<sup>64</sup>

Even so, Mahinay still abused court processes in addition to forum shopping and using intemperate language in his pleading against fellow members of the bar. While his particular transgressions may not be grievous in character as to merit his disbarment, the Court deems it proper to impose a more severe penalty.

In this case, two aggravating circumstances are present: finding of previous administrative liability<sup>65</sup> and lack of remorse.<sup>66</sup> If one or more aggravating circumstances and no mitigating circumstances are present, Canon VI, Section 39 provides that the Court may impose the penalties of suspension or fine for a period or amount not exceeding double of the maximum prescribed penalty.

The CPRA also established a classification of offenses (serious, less serious, and light) for the imposition of penalties against erring lawyers. Canon VI, Section 37 of the CPRA provides that if the respondent is found guilty of a serious offense, any or a combination of the following penalties may be imposed by the Court: (1) disbarment; (2) suspension exceeding six months; (3) revocation of notarial commission and disqualification as notary public for not

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<sup>61</sup> *Saberon v. Larong*, 574 Phil. 510, 520 (2008) [Per J. Carpio-Morales, Second Division].

<sup>62</sup> *Macias v. Selda*, 484 Phil. 10, 14 (2004) [Per J. Puno, Second Division].

<sup>63</sup> A.C. No. 6780, March 15, 2022 [Notice, First Division].

<sup>64</sup> *Id.*

<sup>65</sup> CODE OF PROF. RESPONSIBILITY AND ACCOUNTABILITY, Canon VI, Section 38(b)(1).

<sup>66</sup> CODE OF PROF. RESPONSIBILITY AND ACCOUNTABILITY, Canon VI, Section 38(b)(6).

less than two years; or (4) a fine exceeding PHP 100,000.00. On the other hand, if the respondent is found guilty of a less serious offense, any of the following sanctions, or a combination thereof, may be imposed: (1) suspension from the practice of law for a period within the range of one month to six months, or revocation of notarial commission and disqualification as notary public for less than two years; or (2) a fine within the range of PHP 35,000.00 to PHP 100,000.00. For light offenses, any of the following sanctions may be imposed: (1) a fine within the range of PHP 1,000.00 to PHP 35,000.00; (2) censure; or (3) reprimand. In addition to the sanctions above, the respondent may also be required to do community service or service in the IBP legal aid program if he or she is found guilty of a light offense.<sup>67</sup>

Canon VI, Section 33(n) of the CPRA defines serious offenses to include “[w]illful and deliberate forum shopping and forum shopping through gross negligence.” On the other hand, simple misconduct and use of intemperate or offensive language are treated as less serious offenses. While the abuse of court processes is not specifically mentioned in the enumerated offenses under Canon VI, Sections 33, 34, and 35 of the CPRA, the filing of frivolous motions for inhibition is a light offense under Section 35(d) of the CPRA.

Canon VI, Section 40 sets out the guidelines in meting out the penalties when multiple offenses are involved:

*Section 40. Penalty for multiple offenses. — If the respondent is found liable for more than one (1) offense arising from separate acts or omissions in a single administrative proceeding, the Court shall impose separate penalties for each offense.* Should the aggregate of the imposed penalties exceed five (5) years of suspension from the practice of law or P1,000,000.00 in fines, the respondent may, in the discretion of the Supreme Court be meted with the penalty of disbarment.

*If a single act or omission gives rise to more than one (1) offense, the respondent shall still be found liable for all such offenses, but shall, nonetheless, only be meted with the appropriate penalty for the most serious offense.* (Emphasis supplied)

**ACCORDINGLY**, the Court finds Atty. Makilito B. Mahinay **GUILTY** of violating Canon II, Sections 2, 4 and 23 and Canon III, Section 7 of A.M. No. 22-09-01-SC, or the Code of Professional Responsibility and Accountability. From the foregoing and considering the presence of two aggravating circumstances, i.e. previous administrative liability and lack of remorse, he is hereby meted out the following penalties for each offense:

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<sup>67</sup> CODE OF PROF. RESPONSIBILITY AND ACCOUNTABILITY, Canon VI, Section 37.

(a) For willful and deliberate forum shopping in violation of Canon II, Section 23, Atty. Makilito B. Mahinay is **SUSPENDED** from the practice of law for a period of one year;

(b) For abuse of court processes in filing frivolous motions for inhibition, in violation of Canon III, Section 7, Atty. Makilito B. Mahinay is hereby **FINED** PHP 35,000.00; and

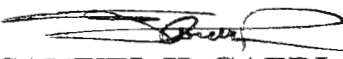
(c) For violation of Canon II, Sections 2 and 4, Atty. Makilito B. Mahinay is hereby **FINED** PHP100,000.00.

Atty. Makilito B. Mahinay is **WARNED** that a repetition of the same or similar offenses in the future shall be dealt with more severely.

He is **DIRECTED** to file a Manifestation to the Court that his suspension has started, copy furnished all courts and quasi-judicial bodies where he has entered his appearance as counsel.


Let copies of this Decision be furnished to the Office of the Bar Confidant, to be appended to the personal record of Atty. Makilito B. Mahinay, as an attorney-at-law; to the Integrated Bar of the Philippines; and to the Office of the Court Administrator for dissemination to all courts throughout the country for their guidance and information.

**SO ORDERED.**

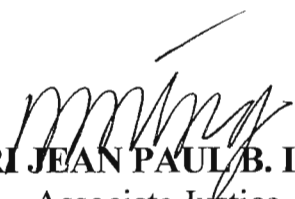


**SAMUEL H. GAERLAN**  
Associate Justice

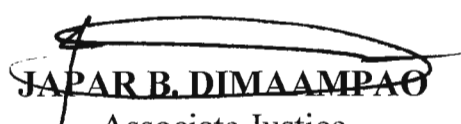
WE CONCUR:



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice



**HENRI JEAN PAUL B. INTING**  
Associate Justice



**JAPAR B. DIMAAMPAO**  
Associate Justice

*(On leave)*  
**MARIA FILOMENA D. SINGH**  
Associate Justice

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