EN BANC

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

Promulgated:

July 30, 2024

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DISSENTING OPINION

HERNANDO, *J.*:

"*One should never be deprived of the joy of giving, a universal good conduct.*"

The crux of the controversy is the generous sponsorship of Atty. Nilo Divina of the activities of the IBP-Central Luzon officers. Plainly, Atty. Divina is being made to account for his generosity. I find this lamentable considering that a benevolent act should never be considered as a violation of law or ethical rule, especially when there is absolutely no proof of any sinister or ill motive on the part of the benefactor, as in this case. Sadly, the Majority found Atty. Divina's benevolence as inappropriate, transcended the bounds of propriety and amounted to a misconduct. The question that may now be posed is: When does one's benevolence become a misconduct? Do we evaluate the propriety of one's generosity based on the amount given, or consider whether bad faith, ill intention, or malice accompanied the act?

The *ponencia* found Atty. Divina to have committed a misconduct by focusing on the excessive amount of his sponsorship. Plainly, the Majority evaluated Atty. Divina's culpability based on the amount of the donations, and not on his real intentions. I do not agree with this method of evaluation.

The Majority found that Atty. Divina's sponsorship of the Balesin and Bali trips of the IBP-Central Luzon officers to have "crossed the borders on excessive and overstepped the line of propriety" and "fell below the exacting standards of conduct expected of a member of the legal profession" amounting to a violation of the Code of Professional Responsibility and Accountability (CPRA).[1] But how do we exactly know the border of excessiveness or the line

[1] *Ponencia*, pp. 16 and 19.

delineating propriety from impropriety? Do we just base it on the amount of the gift, or do we look deeper into whether the act is coupled with bad faith or ill intent? How much is excessive vis-à-vis the financial resources of a benefactor? When does one's generosity transcend into a misconduct?

Atty. Divina has the right to be presumed innocent of the charges against him

There are a few people who truly find joy in giving without expecting anything in return. A generous act, at face value and without prejudice, is a laudable trait. As such, Atty. Divina's act of financially supporting the activity of the IBP-Central Luzon officers, by itself, and without any proof of bad faith or malice, should be characterized as a pure benevolent act, and not a misconduct.

In particular, there is a complete absence of proof that Atty. Divina acted with impropriety when he paid for the trips, which turned out to be legitimate activities of the IBP. There was no proof that Atty. Divina was campaigning for himself or any party or was spurred by corrupt or ill motive. There is nothing in the records to show that Atty. Divina was acting in furtherance of his interests or was trying to influence the results of the forthcoming IBP elections, of which the official campaign period or filing of candidacy had yet to be formally opened.

Considering the utter lack of evidence that he was ill motivated, Atty. Divina must be accorded the benefit of the doubt and presumed to have acted with innocence and good faith in his personal and professional dealings. As this Court held in *Tan v. Alvarico*,[2] "[Attorneys enjoy] the legal presumption that [they are] innocent of the charges against [them] until the contrary is proved, and that as [officers] of the Court, [they are] presumed to have performed [their] duties in accordance with [their] oath."[3]

In administrative proceedings, the quantum of proof is substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion, and that the burden of proof rests on the complainant to establish the allegations in the complaint.[4] Moreover, basic is the rule that reliance on conjectures and suppositions will render an administrative complaint devoid of any basis. Mere suspicion or unfounded charges cannot be given credence. Thus, the failure of complainants to discharge their burden of proof by substantial evidence warrants the dismissal

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2 888 Phil. 345 (2020) [Per C.J. Peralta, First Division].

3 *Id.* at 355, *citing BSA Tower Condominium Corporation v. Atty. Reyes*, 833 Phil. 588, 594 (2018) [Per J. Peralta, Second Division].

4 *Id.*

of the administrative complaint, as in this case. The Court simply has no basis to impose an administrative sanction on the respondent.[5]

Clearly, Atty. Divina was found guilty of misconduct based purely on speculations, prejudices and conjectures. As expressly acknowledged in the *ponencia* itself, the charge against respondent of committing "patently illegal, prohibited and corrupt campaign activities" appears to be based on mere conjectures and surmises.[6]

Considering that no concrete and substantial evidence had been presented to establish that respondent had any intention of joining the race for the IBP Governor, or that his act of covering the trip expenses had anything to do with influencing the results of the forthcoming elections, then there is absolutely nothing to support the Majority's finding of Simple Misconduct, simply because his donations to the IBP were "extravagant and excessive."

Simple Misconduct requires that a transgression of established and definite rules of action be committed

I respectfully dissent in the *ponencia's* finding that Atty. Divina is guilty of Simple Misconduct for violating CPRA, Canon II, Sections 1 and 2.[7]

Simple Misconduct is a less serious offense, there being no manifest elements of corruption, clear intent to violate the law, or flagrant disregard of established rules.[8]

Jurisprudence has recognized misconduct as an *intentional* wrongdoing or a *deliberate* violation of a rule of law or standard of behavior,[9] whether work-related or not.[10] To stress, there must be a *transgression of some established and definite rule of action.*[11]

Here, the *ponencia* categorically acceded that Atty. Divina did not violate Section 14 of the Revised IBP By-Laws.[12] Yet, it proceeded to conclude that there was a misconduct considering that the subject sponsorships were

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5 *Id.* at 356. (Citations omitted)
6 *Ponencia*, p. 15.
7 *Id.* at 19.
8 CODE OF PROF. RESPONSIBILITY AND ACCOUNTABILITY, Canon VI, Sec. 34 (a).
9 *Abulencia v. Hermosisima*, 712 Phil. 248, 252 (2013) [Per J. Perlas-Bernabe, Second Division].
10 *Id. citing Dela Cruz v. Zapico*, 587 Phil. 435, 445 (2008) [Per J. Leonardo-De Castro, *En Banc*].
11 *Office of the Court Administrator v. Espejo*, 792 Phil. 551, 557 (2016) [Per J. Leonardo-De Castro, First Division], *citing Office of Ombudsman-Visayas v. Castro,* 759 Phil. 68, 78 (2015) [Per J. Brion, Second Division]; *See* also *Civil Service Commission v. Ledesma*, 508 Phil. 569, 579 (2005) [J. Carpio, *En Banc*].
12 *Ponencia*, p. 16.

unreasonable, unacceptable, and excessive that overstepped the line of propriety.[13]

However, by what standards did the ponencia measure the alleged ethical transgressions of the respondent as to conclude that they were unreasonable, unacceptable, excessive, and overstepped the line of propriety? Did the ponencia categorically define what is unreasonable, unacceptable, excessive, or proper? Did the ponencia provide guideposts for its determination?

A closer examination of the *ponencia* would reveal that it did not provide a criteria or guideposts in considering the reasonableness, acceptability, excessiveness, or propriety of the questioned acts of the respondent. What is clear though is that respondent has not violated any established and definite rule of action. Consider these:

First, the supposed violations of Canon II, Sections 1 and 2, have not been sufficiently demonstrated.

As reference, CPRA, Canon II, Section 1, prohibits unlawful, dishonest, immoral, or deceitful conduct. In *Gonzales v. Atty. Bañares*,[14] the Court operationalized these terms as follows:

> Rule 1.01, [Now, CPRA, Canon II, Sec. 1] on the other hand, states the norm of conduct to be observed by all lawyers. Any act or omission that is contrary to, or prohibited or unauthorized by, or in defiance of, disobedient to, or disregards the law is unlawful. Unlawful conduct does not necessarily imply the element of criminality although the concept is broad enough to include such element. To be dishonest means the disposition to lie, cheat, deceive, defraud, or betray; be unworthy; lacking in integrity, honesty, probity, integrity in principle, fairness, and straightforwardness, while conduct that is deceitful means the proclivity for fraudulent and deceptive misrepresentation, artifice or device that is used upon another who is ignorant of the true facts, to the prejudice and damage of the party imposed upon.[15]

Meanwhile, Section 2, Canon II prohibits a scandalous behavior that reflects poorly on one's fitness to practice law and brings discredit upon the profession.

Given the foregoing, "excessive generosity" hardly qualifies as an unlawful, dishonest, immoral, or deceitful conduct. First, excessive benevolence cannot be considered as an "act or omission that is contrary to, or prohibited or unauthorized by law, or in defiance of, disobedient to, or disregards the law." The complainant utterly failed to identify the law or rule that was supposedly transgressed by Atty. Divina. There was also absolutely

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[13] *Id.* at 18–19.

[14] 833 Phil. 578 (2018) [Per J. Peralta, Second Division].

[15] *Id.* at 586, *citing Jimenez v. Atty. Francisco*, 749 Phil. 551, 565–566 (2014) [Per J. Mendoza, Second Division].

no showing how such "excessive generosity" discredited the legal profession, or how it poorly reflected on respondent's ability to practice law. There was no proof, whatsoever, that the funds used for the trips came from dubious sources.

Neither could Atty. Divina's actions be considered as scandalous, in the absence of any showing of intimidation, harassment or even discrimination. Atty. Divina's financial contributions are scarcely discriminative, as these have not been exclusively limited to the IBP Central Luzon officers but were extended to other local chapters like Manila, Cebu, Misamis Oriental, and through other activities such as golf tournaments, regional conventions, etc.[16] Significantly, that the sponsorships entailed huge amounts could not likewise be considered as scandalous, as this is relative depending on the financial capacity of the donor, and the standing and needs of the beneficiary.

Common to both Sections 1 and 2 of Canon II is the apparent moral depravity of the behavior and the prejudice or damage directly caused to others as a consequence thereof. The act of respondent hardly elevates to this level. It cannot be said that Atty. Divina's supposed transgressions were knowingly and willfully committed with a wanton purpose. While it remains to be seen if and how his financial contributions have benefitted the legal profession as a whole, there is an utter lack of showing that they have directly injured even a few.

Second, in justifying why it must punish Atty. Divina's excessive generosity, the *ponencia* mentioned the blurring of lines between altruism as a mere expression of gratitude *vis-à-vis* influence peddling.[17]

CPRA, Canon I, Section 2, mandates a lawyer to rely solely on the merits of a cause and not to exert, or give the appearance of, any influence on the authority of the court, tribunal, or other government agency, or its proceedings.[18] Corollarily, Canon II, Section 15 obliges lawyers to observe propriety in all dealings and prohibits them from making claims of power, influence, or relationship with officers and personnel of courts, tribunals and government agencies. In *Rodco Consultancy and Maritime Services Corp. v. Concepcion*,[19] respondent therein was found liable for the prohibited conduct of influence peddling. The Court therein explained how it does not matter whether the respondent's boasts of connections in the right places are true nor whether such connections are actually used, as the *mere claim of influence* already inflicts damage and assaults the integrity of the legal system.

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[16] *Ponencia*, p. 7.
[17] *Id.* at 18.
[18] CODE OF PROF. RESPONSIBILITY AND ACCOUNTABILITY, Canon I, sec. 2.
Section 2. *Merit-based Practice.* — A lawyer shall rely solely on the merits of a cause and not exert, or give the appearance of, any influence on, nor undermine the authority of, the court, tribunal or other government agency, or its proceedings.
[19] 906 Phil. 1, 13, 19 (2021) [*Per Curiam, En Banc*].

However, nowhere in the *ponencia* was it discussed or even alluded to, that Atty. Divina himself made any claims or representations of wielding influence or power over his connections with the IBP leadership. Other than the subject elections which Atty. Divina is himself not a candidate, there is also no indication that any pending matter against him was lodged before the IBP, such that his sponsoring of the trips of some officers may adversely affect its resolution.

The *ponencia* further holds that the prohibition against soliciting and accepting gifts extends even if the same was not in exchange for the performance of an act or favor in order to avoid a situation wherein the recipient may feel compelled to return the favor or that he owes a debt of gratitude or "*utang na loob*" to the giver.[20] However, such a statement only confirms that the *ponencia* engages in speculation. At this point, the *ponencia* is merely speculating that, in the future, Atty. Divina would attempt to call on his beneficiaries and exert his influence over them. Similarly, the *ponencia* already surmises that the recipients will definitely be swayed by the influence wielded by the respondent, and that they would not be capable of performing their duties regularly, properly, and in good faith. Plainly, a conclusion based on surmises and imagination would not stand legal challenge or scrutiny.

Stated otherwise, it cannot be presumed that the recipients of Atty. Divina's financial contributions would respond with *utang na loob*, for there is simply no way of delving into their psyches and thought processes. Though such concept may be validly observed to be a part of Filipino culture, there is no concrete showing that Atty. Divina's generosity would actually trigger a feeling of indebtedness from the responsible IBP officers. In any event, to hastily assume that the latter will act according to such a motivation and to subject respondent to a disciplinary sanction for something that is yet uncertain, would not only be unjust but also unduly preemptive of not just the personal but professional judgment of the IBP officers. To stress, absent any showing of ill motive and bad faith, the supposed recipients of Atty. Divina's "excessive generosity" should always be presumed to have performed their duties regularly, responsibly and with integrity. Given the foregoing, I respectfully disagree with the conclusion that Atty. Divina ought to be reminded of his "sense of propriety in dealing with his colleagues in the legal community" as his actions thus far appear to be well-intentioned for the benefit of the IBP and its members.

Third, Canon II, Section 21 of the CPRA provides:

> **Section 21.** *Prohibition against gift-giving and donations.* — A lawyer shall not directly or indirectly give gifts, donations, contributions of any value or sort, on any occasion, to any court, tribunal or government agency, or any of its officers and personnel.

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[20] *Ponencia*, p. 22. (Emphasis supplied)

Notably, this is a new principle imposed by the CPRA and there has yet been no jurisprudential interpretation on the matter. While the phraseology of the provision seems to impose an absolute, broad, and unqualified prohibition, surely, this cannot contemplate donations and contributions by lawyers to the IBP.

In the first place, although the IBP is a *sui generis* public institution, it is still not a court, tribunal, or government agency. It is only a semi-governmental organization but still possesses a corporate personality. To construe the prohibition as including donations and contributions to the IBP will deprive the same of virtually all acts of liberality *from its own constituent members* and would render nugatory its expressly stated corporate power "to solicit and receive public and private donations and contributions."[21] The crippling effect of such an interpretation on the IBP as a corporate body and the legal professionals who compose it is all too apparent.

There is a lack of discernible guideposts on what constitutes "excessive generosity"

How should contributions, donations, and other acts of liberality be measured vis-à-vis a misconduct? In the absence of a finding of corruption, malice, or ill motive, when should they be deemed excessive and improper?

I submit that the concept of "excessive generosity" still lacks definite and clear guideposts for construction. In fact, it appears that this concept is very fluid as it depends on multiple factors. It cannot be measured with precision as it depends on the attendant circumstances. And circumstances vary in each case. The wealth or financial capacity of a giver is always relative, as well as the needs and standing of the beneficiaries.

Meanwhile, in the evaluation of factual circumstances, should "excessiveness" also be measured by frequency or timing of such contributions? Malice was imputed against Atty. Divina in view of the timing of his series of sponsorships, relative to the succeeding election season. However, I am of the view that the fact that his financial contributions to the IBP began as early as 2012 already negates any claims of malice and excessiveness. Will the conclusion be different if Atty. Divina gave a one-time, isolated, but substantial donation?

Notably, the *ponencia* admits as much that it is only now that it is faced with the difficult task of calibrating guidelines on what constitutes excessive generosity. From the foregoing, it then becomes obvious that complete parameters and clear guideposts have yet to be established before the Court

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[21] Bar Matter No. 4261 *In Re: The Proposed Integrated Bar of the Philippines Revised Revised By-Laws*, March 8, 2023, art. 1, sec. 3.

can define this new gray area of what are the improper acts of liberality, when there is otherwise no finding of illegality, corruption or ill motive.\

Excessive generosity is not equivalent to Simple Misconduct that warrants the imposition of an administrative sanction on the giver and the recipients

If the Court is determined to punish "excessive generosity" as Simple Misconduct, "excessive generosity" must first be clearly defined. In an attempt to quantify what is excessive generosity, the *ponencia* explains:

> **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.**[22]

In effect, the *ponencia* is faulting Atty. Divina for limiting his sponsorship only for the benefit of the chapter officers, for not supporting a particular activity of the chapter, and for not extending his generosity to all the chapter members or the whole IBP as an organization. Suffice it to state that full discretion lies on the respondent on how he would dispose his resources. There is absolutely no law which requires him to extend his sponsorship to all chapter members and not just to the officers, or even to the whole IBP organization. At this juncture, I wish to stress that it is clear as crystal that Atty. Divina did not violate any rule or law as to elevate his act to a simple misconduct. In any case, the sponsored trips were only *among* the donations and sponsorships that Atty. Divina has extended to the IBP. He has also done numerous activities of the same nature in the past which directly benefited the IBP members.

The notion that generosity must be confined within these parameters to avoid being "excessive" imposes a restrictive framework that goes against the very nature of giving. Generosity is inherently subjective. The giver might want to reward only a select few and not the whole organization, and the amount thereof depends on his financial capacity and innate generosity. This is fully within the giver's discretion, and exercising such a discretion is not violative of any rule or law. So how can there be Simple Misconduct?

At this juncture, it must also be mentioned that Atty. Divina had been supporting the IBP as early as 2012 through various sponsorships and donations. In all those years, Atty. Divina's generosity had never been questioned nor was it ever shown that he had received any benefit or personal gain from it. Specifically in this instance, the donations and sponsorships over the years were

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[22] *Ponencia*, p. 23.

definitely not to claim the position of IBP Governor for he was never a candidate, nor did he aspire to be one. Thus, it is downright unfair and unreasonable to hold Atty. Divina administratively liable now for simply wanting to do a selfless act for the benefit of the legal organization.

Assuming that there are sufficient parameters in determining "excessive generosity" and that respondent's act amounted to "excessive generosity" still, this does not amount to a Simple Misconduct. As earlier mentioned, Simple Misconduct is defined as misconduct without the manifest elements of corruption, clear intent to violate the law or flagrant disregard of established rules. Simple Misconduct presupposes a deviation from established rules on what excessive generosity is – one which is clearly still lacking at this point. Generosity, even if excessive, does not violate any law or set of established rules. Moreso in this context where it is purely driven by genuine altruism. *By misclassifying and treating "excessive generosity" as Simple Misconduct, absent any proof of ulterior motive or personal gain, the Court is penalizing an act which is fundamentally good.* Simply put, there is nothing in the records to prove that Atty. Divina clearly intended to violate the law or flagrantly disregarded a set of established rules, in this case, the CPRA.

Lastly, deterring further acts of gratuity from Atty. Divina interferes with the latter's right to freely associate with other members of the legal profession, which is a guaranteed right under the Constitution.[23] Additionally, it interferes with Atty. Divina's right to dispose of one's resources under Article 428 of the New Civil Code which provides that the owner has the right to enjoy and dispose of a thing, without other limitations than those established by law.[24] Notably, there is no limitation under the law on how much one can donate in one's lifetime, nor are there any restrictions applicable to the present case.

The retroactive application of the guidelines set forth by the ponencia would work injustice to Atty. Divina and similarly situated lawyers

To recall, Atty. Divina has been supporting the IBP through various sponsorships and donations, such as Christmas parties, golf tournaments, regional conventions, and similar activities. He sponsors IBP activities in different Chapters like Central Luzon, Manila, Makati, Quezon City, Cebu, Bicolandia, and Misamis Oriental.[25] The sponsored trip of the IBP-Luzon Officers for their team building activities in Balesin, Quezon and Bali, Indonesia, happened in 2022 and February 2023, respectively. Thus, during that period, the CPRA has yet to lapse into effectivity on May 30, 2023.

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[23] *Id.* at 6.
[24] CIVIL CODE, art. 428.
[25] *Ponencia*, p. 7.

Section 1 of the General Provisions of the CPRA provides a transitory provision, *viz*:

> 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.

To stress, the retroactive application of the CPRA should not be applied when it would result to injustice. With all due respect, I submit that finding Atty. Divina guilty of Simple Misconduct would be a manifest injustice, especially in the absence of preexisting guidelines on how generous lawyers, like Atty. Divina, should manage their donations to various individuals and institutions. The Court, in exercising its power of supervision to regulate financial contributions to the IBP, should not operate to prejudice Atty. Divina. Thus, I am of the view that this Court must exercise its discretion under Section 1 to temper the application of the CPRA.

In addition, finding Atty. Divina guilty of Simple Misconduct for making donations to the IBP and sponsoring trips abroad for Chapter officers would set a dangerous precedent to the rest of the legal profession. Sanctioning Atty. Divina for his magnanimous benevolence could potentially prevent other members of the Bar from acting on their philanthropic desire to provide support to the IBP as it may be misconstrued to be tainted with negative intentions and may result in administrative liability. Verily, the *ponencia* creates an absurd situation where, instead of commending lawyers for giving back to the legal community, we are condemning them and assuming that they are acting only out of self-interest and personal and political gain.

Stated otherwise, the disciplinary action against Atty. Divina could create an environment where generous lawyers are subjected to unwarranted scrutiny and administrative complaints, simply based on their charitable actions. Rather than being an admirable virtue, the generosity of a lawyer will now be automatically viewed with ulterior motive. Worse, due to the retroactive application of the guidelines in the *ponencia*, "excessive generosity" may now be weaponized by anybody - such that well-intentioned lawyers who have been consistently donating to an institution may be subjected to administrative complaints just by the mere allegation of "excessive generosity". This would open the floodgates to administrative cases against similarly situated lawyers as Atty. Divina, who now have the burden of proving that their donations are for a noble purpose and not excessive. To a great and worrisome extent, this situation produces a "chilling effect". This effect will cause lawyers to be wary with their donations. As a result, they would hold back on their philanthropic activities. This will have far-reaching implications, especially on institutions which rely heavily on such funds.

Genuine altruism should be lauded rather than penalized. The imposition of restrictions further than what is required by public policy may well be regarded as unjust and tending in a contrary direction, and ultimately, dampens the generous impulse of the heart.[26]

The imposition of administrative sanctions against Attys. Peter Paul S. Maglalang (Maglalang), Winston M. Ginez (Ginez), Jocelyn "Jo" M. Clemente (Clemente), Jade Paulo T. Molo (Molo), Enrique V. Dela Cruz, Jr. (Dela Cruz), and Jose I. Dela Rama (Dela Rama) contravenes the basic rules of fair play and justice

No less than the Constitution provides that every person is guaranteed the right to due process before any judgment against them is issued. In administrative proceedings, it is necessary that respondents are informed of the charges against them and given an opportunity to refute them.[27]

First, I submit that the *ponencia* failed to take into consideration that Attys. Maglalang, Ginez, Clemente, Molo, Dela Cruz, Jr., and Dela Rama (collectively, "Atty. Maglalang, et al."), had no opportunity to defend themselves. It bears emphasis that the present case stemmed from an anonymous letter filed against Atty. Divina for his purported illegal campaigning activities relative to the election of the IBP-Central Luzon Region. The anonymous letter highlighted the instances in which Atty. Divina "allegedly spent hundreds of thousands, if not millions of pesos, in prohibited campaign activities."[28] It is thus highly unwarranted to suddenly penalize Atty. Maglalang, et al. when they had not been properly apprised that there were even existing charges against them.

While Atty. Maglalang, et al. were directed by this Court to file their respective Comments on the anonymous letter,[29] it cannot be said that the same satisfies their right to due process since they only pertained to the circumstances surrounding the Balesin and Bali trips sponsored by Atty. Divina and his supposed intention to run in the upcoming IBP elections. In no way can their respective Comments be considered as an opportunity to rebut any allegations against them, since in the first place, the anonymous letter was filed only against Atty. Divina for his purported engagement in illegal campaign activities. Atty.

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[26] *Martinez v. Martinez*, 1 Phil. 182, 185 (1902) [J. Cooper, First Division].
[27] *Flores-Concepcion v. Castañeda*, 884 Phil. 66, 99 (2020) [Per J. Leonen, *En Banc*].
[28] *Ponencia*, p. 4.
[29] *Id.* at 4–5.

Maglalang, et al. could not have known at the time of the filing of their Comments that the administrative complaint against Atty. Divina would extend to them as well.

Otherwise stated, there was no showing that Atty. Maglalang, et al. were properly apprised of the charges against them considering that the anonymous letter and their respective Comments thereto only delved into Atty. Divina's alleged illegal campaigning activities in connection with the upcoming elections of the IBP-Central Luzon Region. The fact that their names were merely enumerated in the anonymous letter cannot be taken as sufficient proof that they were duly informed of the charges and given the chance to present their case.

Based on the foregoing, Atty. Maglalang, et al. were clearly deprived of their right to due process. As this Court held in *Ombudsman v. Conti*:[30]

> *In administrative proceedings, due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend oneself. In such proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process...* The essence of due process, therefore, as applied to administrative proceedings, is an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of. Thus, a violation of that right occurs when a court or tribunal rules against a party without giving the person the opportunity to be heard.[31] (Emphasis supplied)

Second, I am also of the view that the absence of a full discussion on the administrative liabilities of Atty. Maglalang, et al., violates their right to procedural due process. In *Seares Jr. v National Electrification Administration Board*,[32] the Court held the judgment of administrative liability as void for being violative of the Constitutional requirement of due process, i.e., that the parties are informed of how a decision was decided, with an explanation of the factual and legal reasons that led to the conclusions of the court. The Court therein commiserated with the petitioner because the administrative ruling failed to pinpoint which of the acts allegedly committed exactly pertained to the infraction charged. Where the administrative agency simply made swift shotgun statements regarding the commission of infractions, without any effort to discuss and draw correspondence therein with the supposed evidence or factual findings on record, the Court held that such unjustly hampered petitioner's ability to fully and intelligently focus on his defense or appeal.[33]

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[30] 806 Phil. 384 (2017) [Per J. Mendoza, Second Division].

[31] *Id.* at 395.

[32] G.R. No. 254336, November 18, 2021 [Per J. Lazaro-Javier, First Division] at 18. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

[33] *Id.*

The *ponencia* took great lengths to justify why Atty. Divina's excessive generosity was marked by impropriety or at least created the appearance of impropriety, but lackadaisically arrived at the conclusion that the other respondents should equally be held liable for the same offense and punished with the same sanction, merely because they were supposedly the beneficiaries of Atty. Divina's gifts. I respectfully submit that the *ponencia* disregarded the well-settled principle that attorneys enjoy the legal presumption of innocence until proven otherwise and that as officers of the Court, they are presumed to have performed their duties in accordance with their oath.[34]

It appears that the *ponencia* imposed administrative liabilities on Atty. Maglalang, et al. based simply on a sweeping conclusion that "[t]heir cavalier acceptance of the 'gifts' extended to them while being officers of the IBP cast a serious doubt on their independence, integrity, and impartiality as well as that of the IBP, as an institution" and on a flimsy presumption that their receipt of the gifts "would make them beholden to the giver and this feeling of owed gratitude may cloud their judgment in the future."[35] Absent any discussion on how such a verdict was reached, and contrary to the established precept of presumption of innocence, it seems then that the *ponencia* imputed guilt on Atty. Maglalang, et al. based on pure speculation that they would feel indebted to Atty. Divina by joining the Balesin and Bali trips sponsored by the latter.

Moreover, I submit that the *ponencia*'s reliance on Republic Act No. 3019 and Republic Act No. 6713 to draw parallelisms with the prohibition against direct or indirect receipt of gifts by public officers, is misplaced. It declared:

> The Court's ruling in *Tabuzo* simply means that IBP Officers are not public officers for purposes of prosecution under the relevant laws. Nevertheless, the Court may draw parallelism from these laws in viewing what constitutes improper conduct for purposes of imposing administrative liability.[36]

Even if the IBP, through the Commission on Bar Discipline, may be delegated by the Supreme Court to assist in the conduct of fact-finding investigations and to make recommendations regarding disciplinary actions against lawyers, the Court in *Tabuzo v. Gomos*[37] held that such delegated function is public in nature, but the responsible officers performing such function are still private individuals, and *not public officers*.[38]

Thus, it was error to apply the exact same standards under those laws, especially those prohibitions aimed at quelling graft, corruption, and bribery, when *Tabuzo* clearly held that IBP officers are not within the same category of

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[34] *Tan v. Alvarico*, 888 Phil. 345, 355 (2020) [Per C.J. Peralta, First Division], *citing BSA Tower Condominium Corporation v. Atty. Reyes*, 833 Phil. 588, 594 (2018) [Per J. Peralta, Second Division].

[35] *Ponencia*, p. 24.

[36] *Id.* at 22–23.

[37] 836 Phil. 297 (2018) [Per J. Gesmundo. Third Division].

[38] *Id.* at 314. (Emphasis supplied)

persons. I disagree with the *ponencia* that *Tabuzo*'s categorization of public officers is limited only for prosecution under the above laws but that these laws may be invoked for the imposition of administrative liability. *Tabuzo* expressly clarified:

> *Finally, IBP Commissioners cannot be held administratively liable for malfeasance, misfeasance and non-feasance in the framework of administrative law* because they cannot strictly be considered as being "employed" with the government or of any subdivision, agency or instrumentality including government-owned or controlled corporations.
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> *Nonetheless, IBP Commissioners and other IBP officers may be held administratively liable for violation of the rules promulgated by this Court relative to the integrated bar and to the practice of law.* Even if they are not "public officers" in the context of their employment relationship with the government, they are still "officers of the court" and "servants of the law" who are expected to observe and maintain the rule of law and to make themselves exemplars worthy of emulation by others.[39] (Emphasis supplied, citations omitted)

Tabuzo nuanced that IBP officers may indeed be held administratively liable, not under the above laws on public officers but for a different set of standards: violation of Court-imposed rules relative to the integrated bar and the practice of law. To my mind, this pertains to the CPRA which is the latest and most comprehensive law governing the matter. Notably, while the CPRA's Section 30 of Canon II on Propriety clearly prohibits a government lawyer (and thus, public officer) from both the giving and receiving of gifts or anything of value, Section 21 of the same canon provides that the prohibition against lawyers in general, is only as to the giving of gifts and donations, viz.:

CANON II *Propriety*	
SECTION 21. *Prohibition Against Gift-Giving and Donations. — A* ***lawyer*** shall not, directly or indirectly, ***give*** gifts, donations, contributions of any value or sort, on any occasion, to any court, tribunal or government agency, or any of its officers and personnel. (Emphasis supplied)	**SECTION 30.** *No Financial Interest in Transactions; No Gifts. — **A lawyer in government*** shall not, directly or indirectly, promote or advance his or her private or financial interest or that of another, in any transaction requiring the approval of his or her office. Neither shall such lawyer ***solicit gifts or receive*** anything of value in relation to such interest. Such lawyer in government shall not ***give*** anything of value to, or otherwise unduly favor, any person transacting with his or her office, with the expectation of any benefit in return. (Emphasis supplied)

[39] *Id.* at 315–316.

As the *ponencia* would espouse, if the Court is truly determined to exercise its power to "discipline lawyers for the act of giving and receiving gifts if the context and situation in which it is made constitutes improper conduct,"[40] it is submitted that the above distinction in phraseology should at least be considered in contextualizing the improper conduct it now intends to restrict.

Finally, in *Re: 1989 Elections of the IBP*,[41] allegations of intensive electioneering, excessive spending by candidates, use of government planes, and officious intervention by certain public officials to influence voting led to the suspension of the oath-taking of the 1989 IBP officers-elect pending investigation. Despite finding the respondents therein guilty of illegal electioneering,[42] the Court only annulled the elections and disqualified the respondents from the subsequent special elections. Notably, no administrative sanctions were imposed on the candidates who were found to have committed prohibited acts and reprehensible practices relative to the IBP elections. I therefore submit that in drawing parallelisms with *Re: 1989 Elections of the IBP*, the *ponencia* should likewise consider the extent of legal consequences and penalties. Given that no violation of the IBP By-Laws on electioneering was found in the present case, it is wholly unwarranted to subject the respondents to even a finding of administrative liability and a fine.

All told, there is simply no evidence of Atty. Maglalang, et al.'s supposed violation of their oath or duty as lawyers which warrants the imposition of administrative sanctions upon them. It must be borne in mind that while this Court shall not avoid its responsibility of meting out the proper disciplinary punishment upon erring lawyers who fail to live up to their sworn duties, the Court shall also not wield its axe against those the accusations against whom are not indubitably proven.[43] Much less in this case where the accusations are glaringly baseless and unsubstantiated.[44]

In conclusion, it is my position that: 1) excessive generosity is not equivalent to Simple Misconduct that warrants the imposition of an administrative sanction on the giver and the recipients; 2) in the absence of substantial evidence to the contrary, Atty. Divina must be presumed innocent of the charges against him; and 3) the administrative liability and consequent penalty of Attys. Maglalang, et al. have not been sufficiently established and the imposition of administrative liability against them contravenes the basic rules of fair play and justice.

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[40] *Ponencia*, p. 22.

[41] *In the Matter of the Inquiry into the 1989 Elections of the Integrated Bar of the Philippines*, 258-A Phil. 173, 197 (1989) [*Per Curiam, En Banc*].

[42] *Id.*

[43] *Dillon v. De Quiroz*, 893 Phil. 223, 228 (2021) [Per C.J. Peralta, First Division], *citing Cabas v. Atty. Sususco*, 787 Phil. 167, 174 (2016) [Per then C.J. Peralta, Third Division].

[44] *Id.*

I therefore vote in finding Attys. Nilo T. Divina, 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. **NOT GUILTY** of Simple Misconduct as defined in Canon II, Section 1 and Section 2 of the Code of Professional Responsibility and Accountability.

RAMON PAUL L. HERNANDO
Associate Justice