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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.C. No. 6677. June 10, 2014]

EUPROCINA I. CRISOSTOMO, MARILYN L. SOLIS, EVELYN MARQUIZO, ROSEMARIE BALATUCAN, MILDRED BATANG, MARILEN MINERALES, and MELINDA D. SIOTING, *complainants, vs.* **ATTY. PHILIP Z. A. NAZARENO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; PROSCRIPTION AGAINST FORUM SHOPPING AND VIOLATION OF THE CERTIFICATION REQUIREMENT AGAINST FORUM SHOPPING, DISTINGUISHED.— Separate from the proscription against forum shopping is the violation of the certification requirement against forum shopping, which was distinguished in the case of *Sps. Ong v. CA* as follows: x x x There is a difference in the treatment between failure to comply with the certification requirement and violation of the prohibition against forum shopping not only in terms of imposable sanctions but also in the manner of enforcing them. The former constitutes sufficient cause for the dismissal without prejudice to the filing of the complaint or initiatory pleading upon motion and after hearing, while the latter is a ground for summary dismissal thereof and for direct contempt. x x x.

2. ID.; ID.; ID.; SUBMISSION OF FALSE ENTRIES IN A CERTIFICATION AGAINST FORUM SHOPPING

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CONSTITUTES CONTEMPT OF COURT AND IS A VIOLATION OF THE CODE OF PROFESSIONAL RESPONSIBILITY.— Under Section 5, Rule 7 of the Rules of Court, the submission of false entries in a certification against forum shopping constitutes indirect or direct contempt of court, and **subjects the erring counsel to the corresponding administrative** and criminal **actions**. x x x In the realm of legal ethics, said infraction may be considered as a violation of Rule 1.01, Canon 1 and Rule 10.01, Canon 10 of the Code of Professional Responsibility. In this case, it has been established that Atty. Nazareno made false declarations in the certifications against forum shopping attached to Rudex's pleadings, for which he should be held administratively liable. x x x [As he] had **repetitively** committed the same, the Court hereby suspends him from the practice of law for a period of one (1) year.

3. LEGAL ETHICS; NOTARY PUBLIC; MALPRACTICE; ASSERTING IDENTICAL MATERIAL FALSEHOOD TO SIX COMPLAINTS AND ASSIGNING ONLY ONE DOCUMENT NUMBER TO THEM WHEN EACH SHOULD HAVE BEEN TREATED AS SEPARATE NOTARIAL ACT.— [T]he Court finds Atty. Nazareno guilty of malpractice as a notary public, considering that he assigned only one document number (*i.e.*, Doc. No. 1968) to the certifications against forum shopping attached to the six (6) April 1, 2004 complaints for rescission and ejectment despite the fact that each of them should have been treated as a separate notarial act. It is a standing rule that for every notarial act, the notary shall record in the notarial register at the time of the notarization, among others, the entry and page number of the document notarized, and that he shall give to each instrument or document executed, sworn to, or acknowledged before him a number corresponding to the one in his register. Evidently, Atty. Nazareno did not comply with the foregoing rule. Worse, Atty. Nazareno notarized the certifications against forum shopping attached to all the aforementioned complaints, fully aware that they identically asserted a material falsehood, *i.e.*, that Rudex had not commenced any actions or proceedings or was not aware of any pending actions or proceedings involving the same issues in any other forum. The administrative liability of an erring notary public in this respect was clearly delineated

> as a violation of Rule 1.01, Canon 1 of the Code in the case of *Heirs of the Late Spouses Villanueva v. Atty. Beradio.* x x x [D]ue to the multiplicity of his infractions on this front, coupled with his willful malfeasance in discharging the office, the Court deems it proper to revoke his existing commission and permanently disqualify him from being commissioned as a notary public.

APPEARANCES OF COUNSEL

Thelma Jader-Manalo for complainants.

D E C I S I O N

PERLAS-BERNABE, *J.*:

For the Court's resolution is an administrative complaint[1] filed by complainants Euprocina I. Crisostomo (Crisostomo), Marilyn L. Solis (Solis), Evelyn Marquizo (Marquizo), Rosemarie Balatucan (Balatucan), Mildred Batang (Batang), Marilen Minerales (Minerales), and Melinda D. Sioting (Sioting) against respondent Atty. Philip Z. A. Nazareno (Atty. Nazareno), charging him with making false declarations in the certifications against forum shopping subject of this case in disregard of Section 5, Rule 7 of the Rules of Court, and malpractice as a notary public in violation of the Code of Professional Responsibility.

The Facts

Sometime in 2001, complainants individually purchased housing units (subject properties) in Patricia South Villa Subdivision, Anabu-II, Imus, Cavite, from Rudex International Development Corp. (Rudex).[2] In view of several inadequacies and construction defects[3] in the housing units and the subdivision itself, complainants

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[1] *Rollo*, pp. 1-12.

[2] *Id.* at 167.

[3] Complainants uniformly alleged the following defects in the subdivision and subject properties:

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sought the rescission of their respective contracts to sell before the Housing and Land Use Regulatory Board (HLURB), seeking the refund of the monthly amortizations they had paid.[4] The first batch of rescission cases was filed by herein complainants Sioting[5] on **May 24, 2002**, and Crisostomo[6] and Marquizo[7] on **June 10, 2002**, while the second batch of rescission cases was filed by complainants Balatucan[8] on **March 3, 2003**, Solis[9] and Ederlinda M. Villanueva[10] (represented by Minerales) on **May 12, 2003**, and Batang[11] on **July 29, 2003**. In all the foregoing rescission cases, Rudex was represented by herein respondent Atty. Nazareno.

Judgments of default were eventually rendered against Rudex in the first batch of rescission cases.[12] Sometime in **August**

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1. the walls and stairs of the house started to crack;
2. the rain water is oozing in the window;
3. the foundation of the house is weak;
4. bad smell is coming out of the lavatory, comfort room and floor drainage;
5. the water tank is too small for the subdivision, water being supplied is dirty, unsanitary and not potable and inadequate;
6. defective road, the water stays in the middle of the street;
7. defective clogged drainage;
8. no garbage disposal;
9. no security guard;
10. no street lights; and
11. no open areas for parks and garden as in the supposed area, the water tank was installed. (See *id*. at 86.)

[4] See the complainants' individual complaints; *id*. at 83-139, 260-261, and 275-283.

[5] *Id*. at 275-283.

[6] *Id*. at 6 and 83-92.

[7] *Id*. at 6 and 102-111.

[8] *Id*. 6 and 112-121.

[9] *Id*. at 6.

[10] *Id*. at 6 and 130-139.

[11] *Id*. at 6 and 122-129.

[12] The HLURB rendered a Judgment by Default in favor of Sioting on May 27, 2003. (*Id*. at 7 and 298-304.) The HLURB also rendered a Judgment

2003, Rudex filed three (3) petitions for review[13] before the HLURB assailing the same. In the certifications against forum shopping attached to the said petitions, Rudex, through its President Ruben P. Baes, and legal counsel Atty. Nazareno, stated that it has not commenced or has knowledge of any similar action or proceeding involving the same issues pending before any court, tribunal or agency[14] — this, notwithstanding the fact that Rudex, under the representation of Atty. Nazareno, previously filed an ejectment case on **September 9, 2002** against Sioting and her husband, Rodrigo Sioting (Sps. Sioting), before the Municipal Trial Court of Imus, Cavite (MTC).[15]

On **January 29, 2004**, Rudex, again represented by Atty. Nazareno, filed another complaint[16] against Sps. Sioting before the HLURB for the rescission of their contract to sell and the latter's ejectment, similar to its pending September 9, 2002 ejectment complaint. Yet, in the certification against forum shopping attached thereto executed by the Head of its Credit and Collection department, Norilyn D. Unisan,[17] Rudex declared that it has not commenced or is not aware of any action or proceeding involving the same issues pending before any court, tribunal or agency.[18] The said certification was notarized by

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by Default in favor of Crisostomo and Marquizo on July 7, 2003 and March 27, 2003, respectively. (*Id*. at 6.)

[13] *Id*. at 264. See also petition filed against Sioting; *id*. at 180-192, against Crisostomo; *id*. at 635-650, and against Marquizo; *id*. at 651-663.

[14] *Id*. at 7-8, 153, and 171.

[15] *Id*. at 470. See Decision dated November 18, 2004; *id*. at 470-475.

[16] *Id*. at 167-170.

[17] *Id*. at 171.

[18] The specific portion of the certification against forum shopping of the complaint reads:

> 4. That [Rudex] has not commenced any other action or proceeding involving the same issues in the Supreme Court, the Court of Appeals, or any other tribunal or agency.
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> 5. If I should learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or any

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Atty. Nazareno himself.[19]

On **April 1, 2004**, six (6) similar complaints[20] for rescission of contracts to sell and ejectment, plus damages for non-payment of amortizations due, were filed by Atty. Nazareno, on behalf of Rudex, against the other complainants before the HLURB. The certifications against forum shopping attached thereto likewise stated that Rudex has not commenced or has any knowledge of any similar pending action before any court, tribunal or agency.[21]

On **February 21, 2005**, complainants jointly filed the present administrative complaint for disbarment against Atty. Nazareno, claiming that in the certifications against forum shopping attached to the complaints for rescission and ejectment of Rudex filed while Atty. Nazareno was its counsel, the latter made false declarations therein that no similar actions or proceedings have been commenced by Rudex or remained pending before any other court, tribunal or agency when, in fact, similar actions or proceedings for rescission had been filed by herein complainants before the HLURB against Rudex and Atty. Nazareno, and an ejectment complaint was filed by Rudex, represented by Atty. Nazareno, against Sps. Sioting. In addition, complainants asserted that Atty. Nazareno committed malpractice as a notary public since he only assigned one (1) document number (*i.e.*, Doc. No. 1968) in all the certifications against forum shopping that were separately attached to the six (6) April 1, 2004 complaints for rescission and ejectment.[22]

Despite notice, Atty. Nazareno failed to file his comment and refute the administrative charges against him.[23]

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other tribunal or agency, I undertake to report such fact to [the HLURB] within five (5) days thereafter. (*Id*.)

x x x x x x x x x

[19] *Id*.

[20] *Id*. at 13-17, 24-28, 35-40, 46-50, 59-64, and 72-76.

[21] *Id*. at 2-3.

[22] See *id*. at 1-9.

[23] *Id*. at 729-730.

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In the interim, the HLURB, in the Resolutions dated April 14, 2005[24] and May 12, 2005,[25] dismissed Rudex's complaints for rescission and ejectment[26] on the ground that its statements in the certifications against forum shopping attached thereto were false due to the existence of similar pending cases in violation of Section 5, Rule 7 of the Rules of Court.

The IBP's Report and Recommendation

In a Report and Recommendation[27] dated March 8, 2012, Integrated Bar of the Philippines (IBP) Investigating Commissioner Oliver A. Cachapero recommended the suspension of Atty. Nazareno for a period of six (6) months for his administrative violations.

The Investigating Commissioner found, among others, that there were unassailable proofs that the certification against forum shopping attached to Rudex's ejectment complaint against Sps. Sioting had been erroneously declared, considering that at the time Rudex filed the said complaint in **September 2002**, Sps. Sioting's rescission complaint against Rudex, filed on **May 24, 2002**, was already pending. Hence, it was incumbent upon Rudex to have declared its existence, more so, since both complaints involve the same transaction and essential facts, and a decision on the rescission complaint would amount to *res judicata* on the ejectment complaint.[28] In this relation, the Investigating Commissioner observed that Atty. Nazareno cannot claim innocence of his omission since he was not only Rudex's counsel

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[24] *Id*. at 476-477. Signed by Housing and Land Use Arbiter Ma. Perpetua Y. Aquino and Director Belen G. Ceniza.

[25] *Id.* at 478-479. Signed by Housing and Land Use Arbiter Raymundo A. Foronda and Director Belen G. Ceniza.

[26] Rudex's complaints for rescission and ejectment were dismissed in favor of Ederlinda M. Villanueva, Crisostomo, Solis, Balatucan, Batang, and Sioting. (There is no resolution attached to the records of this case acting on Rudex's complaint for rescission and ejectment against Marquizo.)

[27] *Rollo*, pp. 727-732.

[28] *Id*. at 730-731.

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but the notarizing officer as well. Having knowingly made false entries in the subject certifications against forum shopping, the Investigating Commissioner recommended that Atty. Nazareno be held administratively liable and thereby penalized with six (6) months suspension.[29]

In a Resolution[30] dated April 15, 2013, the IBP Board of Governors adopted and approved the Investigating Commissioner's Report and Recommendation, but modified the recommended penalty from a suspension of six (6) months to only one (1) month.

The Issue Before the Court

The essential issue in this case is whether or not Atty. Nazareno should be held administratively liable and accordingly suspended for a period of one (1) month.

The Court's Ruling

The Court affirms the IBP's findings with modification as to the penalty imposed.

Separate from the proscription against forum shopping[31] is the violation of the certification requirement against forum shopping, which was distinguished in the case of *Sps. Ong v. CA*[32] as follows:

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[29] *Id.* at 731-732.

[30] *Id.* at 726. IBP Resolution No. XX-2013-434.

[31] "Forum shopping is an act of a party, against whom an adverse judgment or order has been rendered in one forum, of seeking and possibly getting a favorable opinion in another forum, other than by appeal or special civil action for *certiorari*. It may also be the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition. The established rule is that for forum shopping to exist, both actions must involve the same transactions, same essential facts and circumstances, and must raise identical causes of actions, subject matter, and issues. x x x." (*Cruz v. Caraos*, 550 Phil. 98, 107 [2007].)

[32] 433 Phil. 490 (2002).

The distinction between the prohibition against forum shopping and the certification requirement should by now be too elementary to be misunderstood. To reiterate, compliance with the certification against forum shopping is separate from and independent of the avoidance of the act of forum shopping itself. There is a difference in the treatment between failure to comply with the certification requirement and violation of the prohibition against forum shopping not only in terms of imposable sanctions but also in the manner of enforcing them. The former constitutes sufficient cause for the dismissal without prejudice to the filing of the complaint or initiatory pleading upon motion and after hearing, while the latter is a ground for summary dismissal thereof and for direct contempt. x x x.[33]

Under Section 5, Rule 7 of the Rules of Court, the submission of false entries in a certification against forum shopping constitutes indirect or direct contempt of court, and **subjects the erring counsel to the corresponding administrative** and criminal **actions**, *viz.*:

Section 5. *Certification against forum shopping.* — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the **same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein**; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. **The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding**

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[33] *Id.* at 501-502.

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administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions. (Emphases supplied)

In the realm of legal ethics, said infraction may be considered as a violation of Rule 1.01, Canon 1 and Rule 10.01, Canon 10 of the Code of Professional Responsibility (Code) which read as follows:

CANON 1 – A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCESSES.

Rule 1.01 - A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

x x x x x x x x x

CANON 10 – A LAWYER OWES CANDOR, FAIRNESS AND GOOD FAITH TO THE COURT.

Rule 10.01 — A lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead, or allow the Court to be misled by any artifice.

In this case, it has been established that Atty. Nazareno made false declarations in the certifications against forum shopping attached to Rudex's pleadings, for which he should be held administratively liable.

Records show that Atty. Nazareno, acting as Rudex's counsel, filed, in August 2003, petitions for review assailing the judgments of default rendered in the first batch of rescission cases without disclosing in the certifications against forum shopping the existence of the ejectment case it filed against Sps. Sioting which involves an issue related to the complainants' rescission cases. Further, on January 29, 2004, Rudex, represented by Atty. Nazareno, filed a complaint for rescission and ejectment against Sps. Sioting without disclosing in the certifications against forum shopping the existence of Sioting's May 24, 2002 rescission complaint against Rudex as well as Rudex's own September 9, 2002

ejectment complaint also against Sps. Sioting. Finally, on April 1, 2004, Atty. Nazareno, once more filed rescission and ejectment complaints against the other complainants in this case without disclosing in the certifications against forum shopping the existence of complainants' own complaints for rescission.

Owing to the **evident similarity of the issues involved** in each set of cases, Atty. Nazareno – as mandated by the Rules of Court and more pertinently, the canons of the Code – should have truthfully declared the existence of the pending related cases in the certifications against forum shopping attached to the pertinent pleadings. Considering that Atty. Nazareno did not even bother to refute the charges against him despite due notice, the Court finds no cogent reason to deviate from the IBP's resolution on his administrative liability. However, as for the penalty to be imposed, the Court deems it proper to modify the IBP's finding on this score.

In *Molina v. Atty. Magat*,[34] a penalty of six (6) months suspension from the practice of law was imposed against the lawyer therein who was shown to have deliberately made false and untruthful statements in one of his pleadings. Given that Atty. Nazareno's infractions are of a similar nature, but recognizing further that he, as may be gleaned from the foregoing discussion, had **repetitively** committed the same, the Court hereby suspends him from the practice of law for a period of one (1) year.

Separately, the Court further finds Atty. Nazareno guilty of malpractice as a notary public, considering that he assigned only one document number (*i.e.*, Doc. No. 1968) to the certifications against forum shopping attached to the six (6) April 1, 2004 complaints for rescission and ejectment despite the fact that each of them should have been treated as a separate notarial act. It is a standing rule that for every notarial act, the notary shall record in the notarial register at the time of the notarization, among others, the entry and page number of the document notarized, and that he shall give to each instrument or document executed, sworn to, or acknowledged before him

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[34] See A.C. No. 1900, June 13, 2012, 672 SCRA 1.

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a number corresponding to the one in his register.[35] Evidently, Atty. Nazareno did not comply with the foregoing rule.

Worse, Atty. Nazareno notarized the certifications against forum shopping attached to all the aforementioned complaints, fully aware that they identically asserted a material falsehood, *i.e.*, that Rudex had not commenced any actions or proceedings or was not aware of any pending actions or proceedings involving the same issues in any other forum. The administrative liability of an erring notary public in this respect was clearly delineated as a violation of Rule 1.01, Canon 1 of the Code in the case of *Heirs of the Late Spouses Villanueva v. Atty. Beradio*,[36] to wit:

> Where admittedly the notary public has personal knowledge of a false statement or information contained in the instrument to be notarized, yet proceeds to affix his or her notarial seal on it, the Court must not hesitate to discipline the notary public accordingly as the circumstances of the case may dictate. Otherwise, the integrity and sanctity of the notarization process may be undermined and public confidence on notarial documents diminished. In this case, respondent's conduct amounted to a breach of **Canon 1 of the Code of Professional Responsibility, which requires lawyers to obey the laws of the land and promote respect for the law and legal processes. Respondent also violated Rule 1.01 of the Code which proscribes lawyers from engaging in unlawful, dishonest, immoral, or deceitful conduct**.[37] (Emphasis supplied)

In said case, the lawyer who knowingly notarized a document containing false statements had his notarial commission revoked and was disqualified from being commissioned as such for a period of one (1) year. Thus, for his malpractice as a notary public, the Court is wont to additionally impose the same penalties of such nature against him. However, due to the multiplicity of his infractions on this front, coupled with his willful malfeasance

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[35] See Section 2(a) and (e), Rule VI of A.M. No. 02-8-13-SC, entitled the "2004 RULES ON NOTARIAL PRACTICE."

[36] 541 Phil. 17 (2007).

[37] *Id.* at 22-23.

in discharging the office, the Court deems it proper to revoke his existing commission and permanently disqualify him from being commissioned as a notary public. Indeed, respondent ought to be reminded that:[38]

> Notarization is not an empty, meaningless, routinary act. It is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public. Notarization converts a private document into a public document thus making that document admissible in evidence without further proof of its authenticity. A notarial document is by law entitled to full faith and credit upon its face. Courts, administrative agencies and the public at large must be able to rely upon the acknowledgment executed by a notary public and appended to a private instrument.
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> x x x x x x x x x
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> When a notary public certifies to the due execution and delivery of the document under his hand and seal he gives the document the force of evidence. Indeed, one of the purposes of requiring documents to be acknowledged before a notary public, in addition to the solemnity which should surround the execution and delivery of documents, is to authorize such documents to be given without further proof of their execution and delivery. Where the notary public is a lawyer, a graver responsibility is placed upon him by reason of his solemn oath to obey the laws and to do no falsehood or consent to the doing of any. Failing in this, he must accept the consequences of his unwarranted actions.

WHEREFORE, respondent Atty. Philip Z. A. Nazareno is found **GUILTY** of making false declarations in the certifications against forum shopping subject of this case, as well as malpractice as a notary public. Accordingly, he is **SUSPENDED** from the practice of law for a period of one (1) year, effective upon his receipt of this Decision, with a **STERN WARNING** that a repetition of the same or similar acts will be dealt with more severely. Further, he is **PERMANENTLY DISQUALIFIED** from being commissioned as a notary public and, his notarial commission, if currently existing, is hereby **REVOKED.**

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[38] *Bernardo v. Atty. Ramos*, 433 Phil. 8, 15-18 (2002).

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Let copies of this Decision be furnished the Office of the Bar Confidant, to be appended to respondent's personal record as attorney. Likewise, copies shall be furnished to the Integrated Bar of the Philippines and all courts in the country for their information and guidance.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Villarama, Jr.,Perez, Mendoza, Reyes, and *Leonen, JJ.,* concur.

EN BANC

[B.M. No. 2713. June 10, 2014]

ATTY. AILEEN R. MAGLANA, *complainant, vs.* **ATTY. JOSE VICENTE R. OPINION,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; INTEGRATED BAR OF THE PHILIPPINES (IBP); ORGANIZATIONAL STRUCTURE.— The IBP is divided into nine (9) geographic regions. x x x Each of these regions is subdivided into chapters and is represented by a Governor elected by delegates from among the member-chapters of each region. In the case of IBP Eastern Visayas, the region is composed of nine (9) chapters. At least one (1) month before the national convention, the delegates from each region shall elect the Governor for their region, who shall be chosen by rotation. These nine (9) Governors constitute the IBP Board of Governors [BOG] which governs and has general charge of the IBP's affairs and activities. Aside from the Governors, the other national officers of the IBP are: the IBP President, the EVP, the National Secretary, the National Treasurer, and the heads of the National Committees.