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The properties in question had been transferred by deed of absolute sale to said respondent-vendee more than six years before the vendor Jose M. Valero died in October, 1972. The deceased having long divested himself of title to the said properties, they were properly excluded from the inventory of his estate.

The real question between petitioners (children of the deceased vendor) and respondent-vendee (a stranger to the deceased's estate) is not collation, but a question of title and ownership of the properties. The probate court has no jurisdiction over this question and petitioners must bring a separate action if they wish to question respondent's title and ownership. Even granting their claim that the deed of sale should be considered a donation or gratuitous transfer, (because of the allegedly excessively low price), their only recourse would be not collation, but a separate action for reduction of the donation to the extent that they may show it to be inofficious (exceeding that which the deceased may give by will) under the provisions of Articles 750 and 752 of the Civil Code.

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**FIRST DIVISION**

[A.C. No. 913. July 25, 1979]

**JOSE B. PEÑA and JUAN B. BAÑEZ, JR.,** *complainants, vs.* **NESTOR M. ANDRADA,** *respondent.*

**SYLLABUS**

**LEGAL AND JUDICIAL ETHICS; ATTORNEYS; DISBARMENT; CASE THEREFOR SHOULD BE DISMISSED WHEN THE COMPLAINANTS FAILED TO PROSECUTE.**— The complainants, Jose B. Peña and Juan B. Bañez, Jr., by filing this disbarment case which they later failed to prosecute, wasted the valuable time of the Supreme Court and of the Office of the Solicitor General. This practice should be discouraged.

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## RESOLUTION

**FERNANDEZ, *J.*:**

In a verified petition filed with this Court on January 31, 1970, Jose B. Peña and Juan B. Bañez, Jr. alleged that the respondent, Nestor M. Andrada, is a member of the Philippine Bar and before his appointment as Provincial Fiscal of Oriental Mindoro, was a practicing attorney; that sometime in 1968, Jose B. Peña engaged the services of respondent as private prosecutor in Criminal Case No. 88333 for estafa entitled "*People of the Philippines versus Juan B. Bañez, Jr. and Amelita Joaquin*" of the Court of First Instance of Manila, Branch XVIII, presided by Judge Ruperto Kapunan, Jr.; that the parties, with the conformity and consent of the Court, agreed to settle the case amicably with Juan B. Bañez, Jr. and his wife, Amelita Joaquin, undertaking to pay Jose B. Peña the amount of the loan involved in the case plus interest; that pursuant to said agreement, Juan B. Bañez, Jr. paid Jose B. Peña, through the latter's attorney, respondent Nestor M. Andrada, the amount of ₱10,000.00 covered by three (3) checks, receipt of which was duly acknowledged by the respondent; that aside from the amount covered by the checks, during the period from December 4, 1968 to March 24, 1969, inclusive, the respondent, directly and/or through a representative, obtained from Juan B. Bañez, Jr. and his wife various amounts with a total of ₱4,050.00 on the assurance of the respondent that he was going to pay the said amount to his client, Jose B. Peña; that all the aforesaid amounts were never received by Jose B. Peña; that the checks covering the amount of ₱10,000.00 were cashed by the respondent himself or through his representative, and together with the other amounts which the respondent received in cash from Juan B. Bañez, Jr. and his wife were all misappropriated by said respondent for his own use and benefit; that despite repeated demands by Jose B. Peña and Juan B. Bañez, Jr., the respondent refused to deliver the aforesaid amounts to Jose B. Peña; that as a consequence of respondent's refusal to deliver the aforesaid amounts to Jose B. Peña, the respondent was charged with

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estafa before the City Fiscal of Manila, docketed as I.S. No. 69-21152; and that the respondent's act in unjustly retaining money due his client constitutes gross misconduct which is a sufficient ground for removal or suspension from his office as an attorney.[1]

This Court required the respondent to file an answer to the complaint within ten (10) days from notice.[2]

In his answer dated March 12, 1970, the respondent admits having received the amount of ₱10,000.00 but not the other amounts mentioned in the petition, and avers, as special defenses, that while the criminal case of estafa against Juan B. Bañez, Jr. and his wife was pending in the Court of First Instance of Manila, involving the sum of ₱27,000.00, the parties agreed to settle the case amicably by the accused paying the entire amount due plus interest and other expenses; that as a result of this agreement, Juan B. Bañez, Jr. started paying Jose B. Peña, through the respondent, the sum of ₱10,000.00; that the additional sum of ₱4,050.00 was the subject discussed in the preliminary investigation wherein the respondent agreed to return the sum of ₱10,000.00; that this administrative charge filed against the respondent was only the result of misunderstanding as the respondent accepted in good faith the amount of ₱10,000.00 for which he issued the corresponding receipt; and that notwithstanding the fact that the respondent rendered legal services to Jose B. Peña, the respondent is willing to return the amount of ₱10,000.00.[3]

This Court referred on April 3, 1970 this case to the Solicitor General for investigation, report and recommendation.[4]

In the report and recommendation submitted by the Solicitor General on May 30, 1979, the following facts were stated:

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[1] Petition, *Rollo*, pp. 29-26.

[2] Resolution dated February 5, 1970, *Rollo*, p. 14.

[3] Answer, Rollo, pp. 3-2.

[4] *Rollo*, p. 1.

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"It appears that respondent was the lawyer of Jose B. Peña in two (2) cases to wit:

a) an administrative case involving a parcel of land in Davao which was already terminated; and

b) in Criminal Case No. 88333, Court of First Instance of Manila, Branch XVII, entitled: '*People of the Philippines vs. Juan B. Bañez, Jr. and Amelita S. Joaquin,*' for estafa in the amount of ₱27,200.00 and wherein Jose E. Peña was the complainant.

Before the criminal case could be terminated, the complainant therein Jose B. Peña (now one of the petitioners herein), and the accused therein Juan B. Bañez, Jr. (also a petitioner herein), and his spouse, agreed to settle the case amicably (par. 5 petition). Pursuant to the agreement, Bañez started paying Peña, thru respondent herein, as follows:

1. ₱5,000 under Treasurer's Check No. T-44105 of the Manufacturers Bank & Trust Co. dated October 16, 1968;

2. ₱1,000 under Pacific Bank Check No. 1230806-L, dated December 10, 1968;

3. ₱4,000 under Pacific Bank Check No. 1230807 dated December 16, 1968.

The said payments were properly receipted and were made with the knowledge of Peña.

The criminal case against the Bañez spouses could not, however, be dismissed since the balance of ₱17,200.00 remained unpaid. Meanwhile, the respondent held on to the amount pending settlement of his attorney's fees in the administrative case adverted to above as well as in the criminal case against the Bañez spouses.

That was the situation when the respondent was appointed on June 16, 1969 as Provincial Fiscal of Oriental Mindoro. By reason of his said appointment, the respondent withdrew as private prosecutor in the criminal case. It was at that juncture that the respondent had a misunderstanding with his then client, Jose B. Peña, anent the amount of attorney's fees. Peña even went to the extent of denying having given authority to respondent in the collection of the various amounts from the Bañez spouses.

Respondent, who was then attending to his duties as Provincial Fiscal of Oriental Mindoro, decided to return the amount to Jose B.

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Bañez, Jr. who, however, claimed that aside from the amounts covered by receipts, he had also given respondent and the latter's representative on different dates, cash totalling ₱4,050.00. As respondent vehemently denied having received the latter amount, Bañez filed with the Fiscal's Office of Manila a complaint for estafa against the herein respondent. It was at this time when the petition for disbarment was filed with this Honorable Court.

An information for estafa was subsequently filed against the respondent in the Court of First Instance of Manila (Criminal Case No. 1563). On July 30, 1971, however, the spouses Bañez executed an affidavit of desistance (Annex 'A' Motion to Dismiss) which reads as follows:

'JUAN B. BAÑEZ, JR. and ANGELITA S. JOAQUIN, spouses, of legal age, and with residence at No. 64 Capalad Street, Balangkas, Valenzuela, Bulacan, being first duly sworn, under oath, jointly depose and state:

1. That they are the complaining witness in Criminal Case No. 1563 entitled '*People of the Philippines vs. Nestor M. Andrada*' of the Court of First Instance of Manila, which is now the subject of re-investigation by the City Fiscal's Office of Manila upon petition of the accused;

2. That said case which is for estafa arose out of the delivery of the sum of ₱14,050.00 by complainants Juan B. Bañez, Jr. and Amelita S. Joaquin to accused Nestor M. Andrada for him to deliver to his client, Jose B. Peña, in connection with the settlement of a certain criminal case (Crim. Case No. 88333, *People vs. Bañez, et al. CFI Manila*) in which herein complainants and said Mr. Peña were parties;

3. That Atty. Andrada acknowledged having received the aforementioned amount of ₱14,050.00, even signing receipts therefor, but kept the amount because he was waiting for complainants to complete the total sum of their obligation before turning the same to his client, Mr. Peña;

4. That due to misunderstanding and lack of communication between complainants, Mr. Peña and Atty. Andrada, who had, in the meantime, withdrawn as Mr. Peña's counsel due to his appointment as provincial fiscal of Oriental Mindoro, herein complainants entertained the thought that Atty. Andrada absconded with or retained the money entrusted to him for

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delivery to Mr. Peña, which led to the filing of the present criminal case in the City Fiscal's Office of Manila, against Atty. Andrada;

5. That when this case was pending preliminary investigation in the City Fiscal's Office, accused Atty. Andrada, being then the provincial fiscal of Oriental Mindoro and saddled with the duties of his position there, was not always present at the investigation, so much so that he had not the full opportunity to amplify his defense and because of his repeated failures to attend the preliminary investigations, the Investigating Fiscal, on June 4, 1970, filed the aforesaid criminal case in the Court of First Instance of Manila;

6. That on June 11, 1970, accused Atty. Andrada returned to herein complainants the amount of ₱14,050.00, which they themselves delivered to Mr. Peña in full settlement of their obligation thereby resulting in the dismissal by the Court of First Instance of the criminal case (Crim. Case No. 88333), on the very same day;

7. That the accused had explained his side of the matter, which explanation the herein complainants found reasonable and satisfactory, and that complainants, after a careful deliberation on all the facts and circumstances surrounding the case, were fully convinced that accused Atty. Andrada had no intention whatsoever to defraud them or to abscond or retain the money for his own use and benefit;

8. That in view of all the foregoing, herein complaining witnesses are no longer interested in, and have decided to desist from, further prosecuting Criminal Case No. 1563 against accused Nestor M. Andrada, or further appearing or testifying before any investigating body, court or administrative body, in any case having to do with the matter that gave rise to the filing of the present criminal case;

9. That, in the interest of fairness and to prevent a miscarriage of justice, complainants herein respectfully request that the City Fiscal's Office of Manila recommend or take such steps that would lead to the prompt dismissal of Criminal Case No. 1563.

IN WITNESS WHEREOF, deponents Juan B. Bañez, Jr. and Amelita S. Joaquin have set their signatures herein below this 29th day of July, 1971, at the City of Manila, Philippines.

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(SGD) JUAN B. BAÑEZ, JR.
(SGD) AMELITA S. JOAQUIN

SUBSCRIBED AND SWORN to before me this 30th day of July, 1971, at the City of Manila, Philippines.

(SGD) MILAGROS V. CAGUIOA
Investigating Fiscal'

On the basis of said affidavit, Assistant City Fiscal Milagros V. Caguios of the City of Manila filed a Motion to Dismiss, (Annex 'B', Motion) the criminal case against the respondent. On October 27, 1971, the CFI of Manila promulgated an Order of Dismissal (Annex 'C' Motion) dismissing the criminal case against respondent."[5]

On the different hearings of the disbarment case scheduled by the Office of the Solicitor General, complainants did not appear. In view thereof, the Solicitor General made the following recommendation:

"From the foregoing, it is clear that the petitioners are no longer interested in prosecuting this Administrative case. No clear and positive step was ever taken by petitioners to prove or substantiate the charges in their petition for respondent's disbarment or suspension. On the other hand, respondent has shown dogged determination in defending himself as shown by his presence in all the proceedings taken before the Office of the Solicitor General wherein he adduced competent documentary evidence marked as Exhibits '1', '2' and '3' which in effect exonerates him from the charge of 'unjustly retaining money due his client and/or misappropriating for his own use and benefit money of his client.'

The Supreme Court has set the guideline for the quantum of evidence that is necessary to justify the imposition of a penalty against a member of the Bar in a disbarment case. Thus, in *Lim vs. Antonio*, Administrative Case No. 848, September 29, 1971, 41 SCRA, Sept. 30, 1971, p. 44, this Honorable Court ruled, as follows:

'Considering the serious consequences of the disbarment or suspension of a member of the Bar, We have consistently held that clearly preponderant evidence is necessary to justify

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[5] Report and Recommendation, pp. 6-10.

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> the imposition of either penalty. More so in the instant case where it has been clearly established that complainant's motives are not beyond suspicion. The evidence of record shows that the respondent was instrumental in the filing of Criminal Cases Nos. 3681 and 91293, the first for perjury filed in the Municipal Court of Masbate, Masbate, and the second for falsification of a public and/or official document filed in the Court of First Instance of Manila, against said complainant.'

In a subsequent case, (*Magno vs. Gellada*, Administrative Case No. 767, December 20, 1971, 42 SCRA, December 20, 1971, p. 549) this Honorable Court held that:

> 'It is a well-settled rule that in disbarment proceedings, the burden of proof rests upon the complainant and for the Court to exercise its disciplinary powers, the case against the respondent must be established by convincing proof. Thus, as held in one case, the power to disbar attorneys ought always to be exercised with great caution, and should follow only where there is a clear preponderance of evidence against the respondent. For the presumption is — an attorney is innocent of the charges prepared and has performed his duty as an officer of the court in accordance with his oath.'

IN VIEW OF THE FOREGOING consideration, it is respectfully recommended that the instant petition for disbarment against respondent Nestor M. Andrada be dismissed.

Respectfully submitted.

Manila, May 21, 1979."[6]

The recommendation of the Solicitor General is well-founded.

The complainants, Jose B. Peña and Juan B. Bañez, Jr., by filing this disbarment case which they later failed to prosecute, wasted the valuable time of the Supreme Court and of the Office of the Solicitor General. This practice should be discouraged.

**WHEREFORE**, the complaint for disbarment against Nestor M. Andrada, a member of the Philippine Bar and Provincial Fiscal of Oriental Mindoro, is hereby DISMISSED.

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[6] *Ibid.*, pp. 16-17.

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The petitioners are ordered to show cause within ten (10) days from notice why they should not be held in contempt of court for filing a petition for disbarment which they failed to prosecute.

**SO ORDERED.**

*Teehankee (Chairman), Makasiar, Guerrero, De Castro,* and *Melencio-Herrera, JJ.*, concur.

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**SECOND DIVISION**

[G.R. No. L-21159. July 25, 1979]

**BACNOTAN CEMENT INDUSTRIES, INC., and RAFAEL GALVEZ,** *petitioners-appellants vs.* **THE HONORABLE COURT OF APPEALS, HON. FELICIANO BELMONTE and HON. JOSE P. FLORES, in their capacity as Judges of the Court of First Instance of La Union, the REPUBLIC OF THE PHILIPPINES and the SHERIFF OF LA UNION or any of his Deputies,** *respondents-appellees.*

**APPEARANCES OF COUNSEL**

*Avanceña Law Office* for petitioners-appellants.

*Acting Solicitor Lorenzo G. Timbol* and *Trial Attorney Edgardo C. Miranda* for respondents-appellees.

**D E C I S I O N**

**FERNANDO, *C.J.*:**

This suit for *certiorari* to review a decision of the Court of Appeals filed by petitiopner Bacnotan Cement Inductries, Inc. as lessee of the co-petitioner, Rafael Galvez, had its origin in the issuance of a preliminary and mandatory injunction issued