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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[A.C. No. 8330. March 16, 2015]

TERESITA B. ENRIQUEZ, *complainant, vs.* **ATTY. TRINA DE VERA,** *respondent*.

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; DISBARMENT OR SUSPENSION; THE LAWYER'S ACT OF ISSUING WORTHLESS CHECKS PUNISHABLE UNDER BATAS PAMBANSA BLG. 22 CONSTITUTES SERIOUS MISCONDUCT.—** This court has ruled that the lawyer's act of issuing worthless checks, punishable under Batas Pambansa Blg. 22, constitutes serious misconduct. In *De Jesus v. Collado*, this court found respondent lawyer guilty of serious misconduct for issuing post-dated checks that were dishonored upon presentment for payment x x x. Misconduct involves "wrongful intention and not a mere error of judgment"; it is serious or gross when it is flagrant.

2. **ID.; ID.; ID.; THE LAWYER'S ISSUANCE OF UNFUNDED CHECK IN VIOLATION OF BATAS PAMBANSA BLG. 22, EXHIBITS HIS INDIFFERENCE TOWARDS THE PERNICIOUS EFFECT OF HIS ILLEGAL ACT TO PUBLIC INTEREST AND PUBLIC ORDER, THEREBY SWEEPING ASIDE HIS LAWYER'S OATH THAT ENJOINED HIM TO SUPPORT THE CONSTITUTION AND OBEY THE LAWS.—** We recently reiterated the purpose and nature of Batas Pambansa Blg. 22 in relation to an administrative case against a member of the bar: x x x. Being a

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lawyer, [respondent] was well aware of the objectives and coverage of Batas Pambansa Blg. 22. If he did not, he was nonetheless presumed to know them, for the law was penal in character and application. His issuance of the unfunded check involved herein knowingly violated Batas Pambansa Blg. 22, and exhibited his indifference towards the pernicious effect of his illegal act to public interest and public order. He thereby swept aside his Lawyer's Oath that enjoined him to support the Constitution and obey the laws.

3. ID.; ID.; ID.; A LAWYER MAY BE REMOVED OR DISCIPLINED NOT ONLY FOR MALPRACTICE AND DISHONESTY IN HIS PROFESSION, BUT ALSO FOR GROSS MISCONDUCT NOT CONNECTED WITH HIS PROFESSIONAL DUTIES, WHICH SHOWED HIM TO BE UNFIT FOR THE OFFICE AND UNWORTHY OF THE PRIVILEGES WHICH HIS LICENSE AND THE LAW CONFER TO HIM.— A lawyer is required to observe the law and be mindful of his or her actions whether acting in a public or private capacity. x x x Membership in the bar requires a high degree of fidelity to the laws whether in a private or professional capacity. "Any transgression of this duty on his part would not only diminish his reputation as a lawyer but would also erode the public's faith in the Legal Profession as a whole." A lawyer "may be removed or otherwise disciplined 'not only for malpractice and dishonesty in his profession, but also for gross misconduct not connected with his professional duties, which showed him to be unfit for the office and unworthy of the privileges which his license and the law confer to him.'"

RESOLUTION

LEONEN, *J.*:

For resolution is an administrative complaint for disbarment or suspension filed by complainant Teresita B. Enriquez against Atty. Trina De Vera. We resolve whether Atty. Trina De Vera committed serious misconduct and should be held administratively liable for the issuance and dishonor of several post-dated checks.

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Teresita B. Enriquez (Teresita) filed her Complaint-Affidavit[1] on June 26, 2009 before this court. The Complaint prayed for Atty. Trina De Vera's (Atty. De Vera) disbarment or suspension in relation to the latter's issuance of worthless checks and non-payment of a loan.[2]

According to Teresita, she is a businesswoman involved in building cell site towers. She is acquainted with Atty. De Vera through the business by subcontracting the cell site acquisition to Atty. De Vera.[3]

Sometime in April 2006, Atty. De Vera borrowed ₱500,000.00 from Teresita with interest of ₱20,000.00 per month until fully paid.[4] However, Teresita did not have the full amount. Atty. De Vera persuaded her to borrow the amount from a common friend, Mary Jane D. Luzon (Mary Jane), by mortgaging her property located in Lucena City.[5] Atty. De Vera issued IBank[6] Check No. 310571 post-dated July 31, 2006 for ₱500,000.00. Atty. De Vera also issued at least two more checks to cover the interest agreed upon.[7]

Teresita alleges that in June 2006, Atty. De Vera obtained another loan from Teresita's sister in the amount of ₱100,000.00. Teresita guaranteed the loan. Atty. De Vera issued IBank Check No. 317689 post-dated July 14, 2006 for ₱100,000.00 to Teresita.

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[1] *Rollo*, pp. 1-4.

[2] *Id*. at 1-2.

[3] *Id*. at 1.

[4] *Id*.

[5] *Id*.

[6] *Id*. at 8. The Complaint-Affidavit refers to the drawee bank as "IBank." Records reveal that the drawee bank is the International Exchange Bank.

[7] *Id*. at 1 and 9-11. In the Complaint, it was alleged that Atty. De Vera issued the following checks: IBank Check No. 310568 post-dated May 30, 2006 for ₱20,000.00 as interest for June 2006 and IBank Check No. 310570 post-dated July 15, 2006 for ₱20,000.00 as interest for July 2006. Annexes to the Complaint show that Atty. De Vera issued three (3) checks at the value of ₱20,000.00 each for the months of May to July 2006.

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Teresita claimed that she paid her sister the amount borrowed by Atty. De Vera.[8]

Upon maturity of the checks, Teresita presented the checks for payment. However, the checks "bounced" for being drawn against insufficient funds. Teresita attempted to encash the checks for a second time. However, the checks were dishonored because the account was closed.[9]

Teresita demanded payment from Atty. De Vera. However, she failed to settle her obligations, prompting Teresita to file complaints against Atty. De Vera for violation of Batas Pambansa Blg. 22 and estafa under Article 315, paragraph 2(d) of the Revised Penal Code.[10]

The Quezon City Prosecutor's Office issued the Resolution dated March 4, 2008 finding probable cause for violation of Batas Pambansa Blg. 22 and Article 315, paragraph 2(d) of the Revised Penal Code. On the same day, an Information for estafa under Article 315, paragraph 2(d) of the Revised Penal Code was filed before the Regional Trial Court of Quezon City. Subsequently, a warrant of arrest was issued by the trial court.[11]

In her administrative complaint, Teresita prays that Atty. De Vera be disbarred or suspended for violation of her oath under Rule 138, Section 27 of the Rules of Court.[12]

On July 29, 2009, this court required Atty. De Vera to comment on the Complaint.[13]

Atty. De Vera filed her Answer[14] dated June 24, 2010. She presented her version of the facts.

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[8] *Id.* at 2.

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.* at 3.

[13] *Id.* at 20.

[14] *Id.* at 51-53.

According to Atty. De Vera, in February 2006, Teresita awarded a Site Acquisition and Permitting Project to Atty. De Vera's group. The project involved twenty-nine (29) Globe Telecom sites across Northern and Southern Luzon.[15]

Atty. De Vera alleges that Teresita could not pay the required 15% downpayment per site. Thus, they agreed that Atty. De Vera would advance the costs for mobilization and survey, while Teresita would cover the costs for application of building permits. Teresita, thus, owed her ₱195,000.00 per site.[16]

Teresita had not paid Atty. De Vera the downpayment by March 2006.[17] At that time, Teresita had to deliver at least five (5) cell sites to Globe Telecom.[18] However, Teresita did not have the funds required for the application of building permits that costs around ₱100,000.00 for each cell site.[19]

Teresita was constrained to borrow ₱500,000.00 from Mary Jane. Subsequently, Teresita approached Atty. De Vera and asked that the latter lend Teresita checks to guaranty the loan. The main reason Teresita gave was that she had been frequently arguing with her husband regarding the loan.[20]

Atty. De Vera denies the ₱100,000.00 loan from Teresita's sister.[21] She only lent Teresita another check as "additional guaranty for the five sites[.]"[22]

Atty. De Vera argues that the checks were not drawn, issued, and delivered to Teresita for value. The checks were not meant to be deposited.[23]

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[15] *Id*. at 54 and 112.

[16] *Id*.

[17] *Id*.

[18] *Id*.

[19] *Id*. at 55 and 112.

[20] *Id*.

[21] *Id*. at 55 and 113.

[22] *Id*.

[23] *Id*.

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Furthermore, Atty. De Vera claims that the present administrative case is baseless. She points out that the proceedings before the Quezon City Prosecutor's Office were under reinvestigation since she did not have the opportunity to answer the criminal complaint.[24]

Moreover, "nowhere in both the affidavit-complaint for Estafa/BP 22 and the administrative complaint was there any proof that . . . [Atty. De Vera] had in any manner breached her oath as a lawyer [or] abused her position against the interests of the complainant."[25]

Atty. De Vera alleges that she was the one who was abused.[26] In addition, "[a]ll the bare allegations that [Atty. De Vera] was the one who enticed [Teresita] to mortgage her property and that the checks issued by [Atty. De Vera] will be honored upon maturity do not constitute deceitful conduct on the part of [Atty. De Vera]."[27]

On August 25, 2010, this court noted Atty. De Vera's Answer and referred the case to the Integrated Bar of the Philippines for "investigation, report and recommendation or decision within ninety (90) days from receipt of [the] records[.]"[28]

The Commission on Bar Discipline of the Integrated Bar of the Philippines scheduled mandatory conferences where the parties defined the issues, stipulated on facts, and marked exhibits.[29] Upon the termination of the mandatory conferences, the parties were "directed to submit their respective verified position papers within a period of thirty (30) days from receipt of the Order."[30]

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[24] *Id*. at 51.

[25] *Id*.

[26] *Id*.

[27] *Id*.

[28] *Id*. at 58.

[29] *Id*. at 110.

[30] *Id*.

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Both parties failed to file their position papers.[31]

The Investigating Commissioner of the Commission on Bar Discipline of the Integrated Bar of the Philippines found Atty. De Vera administratively liable for serious misconduct and recommended the penalty of suspension for one (1) year from the practice of law.[32] The Investigating Commissioner ruled:

> Respondent's assertion that the checks she issued to complainant were not security for the loans she obtained but mere guaranty checks and not for deposit deserves no credence; it is contrary to the ordinary experience.
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> . . . . . .
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> . . . [T]he pieces of evidenc[e] on reco[r]d substantially shows [sic] that indeed respondent incurred monetary obligations from complainant, and she issued postdated checks to the latter as security for the payment of the loans.
>
> Assuming . . . that respondent's version of facts were [sic] true, she is still guilty of serious misconduct.
>
> The gravamen of the offense punished by B.P. Blg. 22 is the act of making and issuing . . . worthless check[s]; that is, a check that is dishonored upon its presentation for payment. The law is not intended or designed to coerce a debtor to pay his debt. The thrust of the law is to prohibit, under pain of penal sanctions, the making and circulation of worthless checks. . . . A check issued as an evidence of debt — though not intended to be presented for payment — has the same effect as an ordinary check and would fall within the ambit of B.P. Blg. 22.
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> . . . . . .
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> As a lawyer, respondent is deemed to know the law, especially B.P. Blg. 22. By issuing checks in violation of the provisions of the law, respondent is guilty of serious misconduct.
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> . . . [A] lawyer may be disciplined not only for malpractice in connection with his profession, but also for gross misconduct outside of his professional capacity[.][33] (Citation omitted)

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[31] *Id*.

[32] *Id*. at 116.

[33] *Id*. at 113-114.

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In issuing the worthless checks, Atty. De Vera did not only violate the law, but she also broke her oath as a lawyer and transgressed the Canons in the Code of Professional Responsibility.[34] The Investigating Commissioner found that Atty. De Vera violated the following provisions:

> Cannon [sic] 1 – A lawyer shall uphold the Constitution, obey the laws of the land and promote respect for the law and legal processes.
>
> Rule 1.01 – A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.
>
> Canon 7 – A lawyer shall at all times uphold the integrity and dignity of the legal profession and support the activities of the Integrated Bar.
>
> Rule 7.03 – A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.[35]

The dispositive portion of the Investigating Commissioner's Report and Recommendation[36] reads:

> WHEREFORE, premises considered, respondent is guilty of serious misconduct and it is recommended that she be suspended for a period of one (1) year from the practice of law.[37]

In the Notice of Resolution No. XX-2013-612[38] dated May 11, 2013, the Integrated Bar of the Philippines Board of Governors resolved to adopt the Investigating Commissioner's recommendation:

> *RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, the Report and Recommendation of the*

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[34] *Id*. at 115.

[35] *Id*.

[36] *Id*. at 109-116.

[37] *Id*. at 116.

[38] *Id*. at 108.

Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", and finding the recommendation fully supported by the evidence on record and the applicable laws and rules and considering that Respondent violated the B.P. 22 by issuing a worthless check, the Attorney's Oath and Canon 1, Rule 1.01, Canon 7 and Rule 7.03 of the Code of Professional Responsibility, Atty. Trina De Vera is hereby ***SUSPENDED from the practice of law for one (1) year***.[39] (Emphasis in the original)

Teresita filed the Partial Motion for Reconsideration[40] dated September 17, 2013 of the Integrated Bar of the Philippines Board of Governors' Resolution. Atty. De Vera filed the Motion for Reconsideration[41] dated September 21, 2013.

In the Notice of Resolution No. XXI-2014-241[42] dated May 3, 2014, the Integrated Bar of the Philippines Board of Governors denied the parties' respective motions:

RESOLVED to DENY respective Motions for Reconsideration of Complainant and Respondent, there being no cogent reason to reverse the findings of the Commission and the resolution subject of the motion, they being a mere reiteration of the matters which had already been threshed out and taken into consideration. Moreover, respondent's Motion for Reconsideration was filed out of time pursuant to his Motion for Extension of Time which is a prohibited pleading under Rule 139-B of the Rules and resorted to by lawyers at times to delay proceeding. Thus, Resolution No. XX-2013-612 dated May 11, 2013 is hereby ***AFFIRMED.***[43] (Emphasis in the original)

The main issue is whether Atty. De Vera committed serious misconduct and should be held administratively liable for the

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[39] *Id*.

[40] *Id*. at 130-134.

[41] *Id*. at 138-143.

[42] *Id*. at 219-220.

[43] *Id*. at 219.

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issuance and dishonor of worthless checks in violation of the Lawyer's Oath and the Code of Professional Responsibility.

After considering the parties' arguments and the records of this case, we resolve to adopt and approve the recommendations of the Integrated Bar of the Philippines Board of Governors.

Atty. De Vera tries to free herself from liability by arguing that she did not incur the loans alleged by Teresita, and the checks were issued merely as a guaranty and not as payment for the loan. She also raises the prematurity of the administrative complaint in view of the pendency of the criminal proceedings considering that "the allegations of deceitful conduct [are] intimately intertwined with the criminal acts complained of."[44]

This is not a case of first impression. This court has ruled that the lawyer's act of issuing worthless checks, punishable under Batas Pambansa Blg. 22, constitutes serious misconduct.

In *De Jesus v. Collado*,[45] this court found respondent lawyer guilty of serious misconduct for issuing post-dated checks that were dishonored upon presentment for payment:

> In the case at bar, no conviction for violation of B.P. Blg. 22 has as yet been obtained against respondent Collado. *We do not, however, believe that conviction of the criminal charges raised against her is essential, so far as either the administrative or civil service case or the disbarment charge against her is concerned*. Since she had admitted issuing the checks when she did not have enough money in her bank account to cover the total amount thereof, it cannot be gainsaid that the acts with which she was charged would constitute a crime penalized by B.P. Blg. 22. *We consider that issuance of checks in violation of the provisions of B.P. Blg. 22 constitutes serious misconduct on the part of a member of the Bar*.[46] (Emphasis supplied, citation omitted)

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[44] *Id*. at 52.

[45] A.C. No. 3806, December 16, 1992, 216 SCRA 619 [*Per Curiam, En Banc*].

[46] *Id*. at 623-624.

Misconduct involves "wrongful intention and not a mere error of judgment";[47] it is serious or gross when it is flagrant.[48]

We recently reiterated the purpose and nature of Batas Pambansa Blg. 22 in relation to an administrative case against a member of the bar:

> Batas Pambansa Blg. 22 has been enacted in order to safeguard the interest of the banking system and the legitimate public checking account users. The gravamen of the offense defined and punished by Batas Pambansa Blg. 22 . . . is the act of making and issuing a worthless check, or any check that is dishonored upon its presentment for payment and putting it in circulation; the law is designed to prohibit and altogether eliminate the deleterious and pernicious practice of issuing checks with insufficient funds, or with no credit, because the practice is deemed a public nuisance, a crime against public order to be abated.
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> . . . . . .
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> Being a lawyer, [respondent] was well aware of the objectives and coverage of Batas Pambansa Blg. 22. If he did not, he was nonetheless presumed to know them, for the law was penal in character and application. His issuance of the unfunded check involved herein knowingly violated Batas Pambansa Blg. 22, and exhibited his indifference towards the pernicious effect of his illegal act to public interest and public order. He thereby swept aside his Lawyer's Oath that enjoined him to support the Constitution and obey the laws.[49]

(Citations omitted)

A lawyer is required to observe the law and be mindful of his or her actions whether acting in a public or private

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[47] *Philippine Amusement and Gaming Corporation v. Atty. Carandang*, 516 Phil. 299, 306 (2006) [Per *J*. Sandoval-Gutierrez, Second Division].

[48] See *Philippine Amusement and Gaming Corporation v. Atty. Carandang*, 516 Phil. 299, 306 (2006) [Per *J*. Sandoval-Gutierrez, Second Division].

[49] *Ong v. Delos Santos*, A.C. No. 10179, March 4, 2014, 717 SCRA 663, 668-669 [Per *J*. Bersamin, En Banc]; See *Philippine Amusement and Gaming Corporation v. Atty. Carandang*, 516 Phil. 299, 305 (2006) [Per *J*. Sandoval-Gutierrez, Second Division].

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capacity.[50] The Code of Professional Responsibility provides:

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.
. . .	. . . . .
CANON 7 -	A LAWYER SHALL AT ALL TIMES UPHOLD THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION AND SUPPORT THE ACTIVITIES OF THE INTEGRATED BAR.
. . .	. . . . .
Rule 7.03 -	A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

The Investigating Commissioner found that Atty. De Vera incurred monetary obligations from Teresita. Atty. De Vera admitted issuing the checks to Teresita. She refused to answer for her liabilities by denying the existence of the loan and claiming that the checks were mere "show checks."[51] However, she failed to present evidence to prove those allegations.

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[50] *See* Attorney's Oath "I, _____ do solemnly swear that I will maintain allegiance to the Republic of the Philippines; I will support its Constitution and obey the laws as well as the legal orders of the duly constituted authorities therein; I will do no falsehood, nor consent to the doing of any in court; I will not wittingly or willingly promote or sue any groundless, false or unlawful suit, or give aid nor consent to the same; I will delay no man for money or malice, and will conduct myself as a lawyer according to the best of my knowledge and discretion with all good fidelity as well to the courts as to my clients; and I impose upon myself this voluntary obligation without any mental reservation or purpose of evasion. So help me God."

[51] *Rollo*, pp. 139-142.

The Decision[52] wherein the trial court found Teresita civilly liable to Mary Jane for ₱540,000.00,[53] and on which Atty. De Vera relies upon, is not sufficient evidence to hold that there was no separate transaction between Teresita and Atty. De Vera. The Decision involved the post-dated checks issued by Teresita to Mary Jane only.[54] Mary Jane merely claimed that she had no personal knowledge of any transaction between Teresita and Atty. De Vera.[55]

The Investigating Commissioner correctly pointed out that Atty. De Vera's allegation of "lending" her checks to Teresita is contrary to ordinary human experience. As a lawyer, Atty. De Vera is presumed to know the consequences of her acts. She issued several post-dated checks for value that were dishonored upon presentation for payment.

Membership in the bar requires a high degree of fidelity to the laws whether in a private or professional capacity. "Any transgression of this duty on his part would not only diminish his reputation as a lawyer but would also erode the public's faith in the Legal Profession as a whole."[56] A lawyer "may be removed or otherwise disciplined 'not only for malpractice and dishonesty in his profession, but also for gross misconduct not connected with his professional duties, which showed him to be unfit for the office and unworthy of the privileges which his license and the law confer to him.'"[57]

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[52] *Rollo*, pp. 144-154. The January 20, 2011 Decision, docketed as Criminal Case Nos. 144629-31 and entitled *People of the Philippines v. Teresita B. Enriquez*, was penned by Presiding Judge Alfredo D. Ampuan of Branch 33, Metropolitan Trial Court of Metro Manila, Quezon City. The case pertains to three counts of violation of Batas Pambansa Blg. 22.

[53] *Id*. at 154.

[54] *Id*. at 144.

[55] *Id*. at 147.

[56] *Ong v. Delos Santos*, A.C. No. 10179, March 4, 2014, 717 SCRA 663, 671 [Per *J*. Bersamin, *En Banc*].

[57] *Lizaso v. Amante*, A.C. No. 2019, June 3, 1991, 198 SCRA 1, 11 [*Per Curiam, En Banc*]; See *Po Cham v. Atty. Pizarro*, 504 Phil. 273, 286-287 (2005) [Per *J*. Carpio Morales, Third Division].

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WHEREFORE, respondent Atty. Trina De Vera is **SUSPENDED** from the practice of law for one (1) year. Let a copy of this Resolution be entered in Atty. De Vera's personal record with the Office of the Bar Confidant, and a copy be served to the Integrated Bar of the Philippines and the Office of the Court Administrator for circulation to all the courts in the land.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Mendoza, JJ.,* concur.

THIRD DIVISION

[G.R. No. 183212. March 16, 2015]

WALLEM PHILIPPINES SERVICES, INC. and WALLEM SHIP MANAGEMENT, LTD., *petitioners, vs.* **HEIRS OF THE LATE PETER PADRONES,** *respondents*.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; EMPLOYEES' COMPENSATION; COMPENSABILITY; IF THE SEAMAN DIES AFTER THE TERMINATION OF HIS CONTRACT, HIS BENEFICIARIES ARE NOT ENTITLED TO DEATH BENEFITS.— It is settled that the terms and conditions of a seafarer's employment, including claims for death and disability benefits, is a matter governed, not only by medical findings, but by the contract he entered into with his employer and the law which is deemed integrated therein. In the present case, considering that Padrones' employment contract was executed in December 1990, the provisions of POEA Standard Employment Contract)POEA-SEC), based on POEA Memorandum Circular No. 55, series of 1996, govern. x x x [I]t is clear [from Section 20 (A) of the POEA-SEC] that for the death of a seafarer to be compensable, the same must occur during the term of his