Republic of the Philippines
Supreme Court
Baguio City

EN BANC

DANIEL SCOTT MCKINNEY,
Complainant,

- versus -

ATTYS. JERRY BAÑARES and RACHEL S. MIÑON-BAÑARES,
Respondents.

A.C. No. 10808

Present:

GESMUNDO, *C.J.*,
LEONEN,
CAGUIOA,
HERNANDO,*
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ, M.,
GAERLAN,
ROSARIO,*
LOPEZ, J.,
DIMAAMPAO,
MARQUEZ,
KHO, JR., and
SINGH, *JJ.*

Promulgated:

April 25, 2023

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DECISION

GESMUNDO, *C.J.*:

Before the Court is a Complaint for Disbarment[1] filed on June 3, 2015 by Daniel Scott McKinney (*complainant*), against Atty. Jerry Bañares (*Atty.*

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* On leave.
1 *Rollo*, pp. 1-5.

Bañares) and Atty. Rachel S. Miñon-Bañares[2] (*Atty. Miñon-Bañares*; collectively, *respondents*). The complainant alleged that respondents violated the Code of Professional Responsibility (*CPR*).

Antecedents

Complainant, an American,[3] alleged that he entered into an Engagement Contract,[4] as Chief Executive Officer (*CEO*)/President of Asia Properties, Inc., with Bañares & Associates Law Offices on August 9, 2006. Then on August 10, 2007, complainant, as CEO/President of Cadlao Island Development Corporation, a subsidiary of Asia Properties, Inc. also entered into another Engagement Contract[5] with Bañares & Associates Law Offices. The corporate name "Cadlao Island Development Corporation" was later changed to Tinaga Resorts Corporation[6] (the *Corporation*, for brevity), through the amendment of its Articles of Incorporation, which was approved by the Securities and Exchange Commission on March 19, 2010.[7]

Complainant alleged that in 2011, the Corporation bought several lots in Tinaga and Calaguas Islands in Vinzons, Camarines Norte, including lots 92 and 94 (*subject lots*) through Bañares & Associates Law Offices. Atty. Bañares allegedly volunteered, in his capacity as retained counsel, to act and sign as the buyer of the subject lots on behalf of the Corporation. The subject lots would be registered under Atty. Bañares's name and would then be transferred, subsequently, under the name of the Corporation. Allegedly persuaded by Atty. Bañares, complainant gave respondents a total amount of ₱891,838.14 for the full payment of the subject lots and for titling expenses and taxes.[8]

Complainant also alleged that Atty. Bañares failed to fully pay the sellers and transfer the lots in the name of the Corporation. After several demands for the same, complainant filed the instant administrative complaint with this Court. Complainant also raised that the complaint is not the first of its kind filed against Atty. Bañares, since he was already suspended from the practice of law in a previously decided case.[9]

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2 Also referred to as "Rachel M. Banares," "Rachel S. Minon," "Rachel S. Minon-Banares," and "Rachel Bañares" in some parts of the *rollo* (see *rollo*, pp. 22, 34, and 128).
3 *Rollo*, p. 1.
4 Id. at 6-8.
5 Id. at 9-11.
6 Id. at 12.
7 Id. at 12-14.
8 Id. at 1-2.
9 Id. at 2-3.

Further, complainant claims that Atty. Miñon-Bañares had been actively practicing law while serving as incumbent Municipal Mayor of Corcuera, Romblon in breach of Section 90(a) of the Local Government Code of 1991 (*LGC*). Complainant asserts that Atty. Miñon-Bañares signed the acknowledgment receipts in connection with the sale of the subject lots, which shows that she was practicing law while sitting as municipal mayor.[10]

In her Comment,[11] Atty. Miñon-Bañares argued that when she assumed office as municipal mayor, it was Atty. Bañares, then reinstated to law practice, and other lawyers of their law firm who catered to their clients. She merely followed up the status of the titling with the handling lawyer, Atty. Bañares. She claimed coordinating between Atty. Bañares and complainant when they had disagreements with respect to the titling. She also claimed that even after termination of the retainer agreement between their law firm and the Corporation, she answered complainant's queries without a fee in the spirit of friendship.[12] In respondents' Position Paper,[13] Atty. Miñon-Bañares asserted that the fact that she signed the acknowledgment receipts is not, on its own, tantamount to legal practice.[14] She further asserted that complainant considered her as his broker given that the acknowledgment receipts, which complainant asked her to sign, provides that she is receiving the amount for the seller.[15]

Atty. Miñon-Bañares confirmed that complainant indeed provide ₱891,838.14 for the purchase of the subject lots and that said amount was spent by Atty. Bañares for the same purpose.[16] She alleged that the *Pagpapatibay*[17] purportedly signed by the sellers, which stated that they have not received full payment on the purchased lots, was falsified.[18] She even presented a *Sinumpaang Salaysay*,[19] signed by one of the sellers, and an Acknowledgment Receipt[20] which provided that, among other things, Atty. Bañares had purchased the subject lots from the sellers in 2012 and had fully paid them.[21]

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10 Id. at 3.
11 Id. at 34-45.
12 Id. at 35-37.
13 Id. at 133-144.
14 Id. at 142.
15 Id.
16 Id. at 39-40.
17 Id. at 23.
18 Id. at 41.
19 Id. at 58.
20 Id. at 59.
21 Id. at 58.

Atty. Bañares, in his Comment,[22] claimed that he used the amount he received from complainant in purchasing and titling the subject lots.[23] He argues that the *Sinumpaang Salaysay* and acknowledgment receipt offered by Atty. Miñon-Bañares in her Comment show that he had purchased the lots from the sellers. He also admitted to acting as a "dummy" in the real property transactions, but insists that he was only prevailed upon by the orders of Atty. Miñon-Bañares and complainant.[24]

On June 13, 2018, complainant executed an Affidavit of Desistance and Motion to Withdraw Complaint.[25] Therein, complainant claimed to have lost interest in pursuing this administrative suit. Furthermore, complainant avers that the sellers have confirmed with him that they had already been fully paid by Atty. Bañares.[26]

The IBP Ruling

On September 30, 2020, the Integrated Bar of the Philippines (*IBP*) Investigating Commissioner issued his Report and Recommendation,[27] which recommended to suspend Atty. Miñon-Bañares for one year from the practice of law and imposed the penalty of disbarment against Atty. Bañares.[28]

The Investigating Commissioner held that respondents are liable for violating the CPR for acquiescing into acting as vendees of the lots and subsequently securing free patent titles for the subject lots in their names. These lots were eventually conveyed to the Corporation through a simulated deed of absolute sale, which obviously aided complainant in acquiring the same, even though the Corporation was not qualified to acquire free patent titles over the lots, circumventing Sec. 44, Chapter VII of the Public Land Act, as amended.[29] The IBP Board of Governors (*IBP Board*) then issued its September 25, 2021 Resolution[30] adopting the findings of the Report and Recommendation of the Investigating Commissioner.

A Manifestation[31] dated December 15, 2021 was filed with the IBP Commission on Bar Discipline (*IBP Commission*). It informed the IBP Commission that Atty. Bañares had passed away and attached thereto was the

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22 Id. at 61-83.
23 Id. at 77.
24 Id. at 71.
25 Id. at 99-100.
26 Id. at 99.
27 Id. at 200-207.
28 Id. at 207.
29 Id. at 205.
30 Id. at 198-199.
31 Id. at 148-150.

certified true copy of the death certificate of Atty. Bañares.[32] Motions for reconsideration were then respectively filed by Atty. Bañares's counsel[33] and Atty. Miñon-Bañares[34] on December 29, 2021 and January 7, 2022.

The IBP Commission noted the foregoing motions for reconsideration filed by respondents and cited *Rico v. Madrazo, Jr.*[35] and *Tan v. Alvarico*[36] that the filing of motions for reconsideration and petition for review of the resolution of the IBP Board had been done away with and that the IBP Board and the IBP Commission were required to transmit the records of the case to this Court for adjudication.[37]

Issue

WHETHER ATTY. BAÑARES AND ATTY. MIÑON-BAÑARES ARE ADMINISTRATIVELY LIABLE FOR VIOLATING THE CODE OF PROFESSIONAL RESPONSIBILITY.

In the motion for reconsideration, counsel for Atty. Bañares prayed for dismissal of the pending administrative case given the earlier manifestation that Atty. Bañares had already died. The motion cited the case of *Flores-Concepcion v. Castañeda*[38] and argued that Atty. Bañares will no longer be able to defend himself from the charges filed against him. Given this pronouncement and for humanitarian reasons, Atty. Bañares's counsel pleaded for the dismissal of the case against Atty. Bañares.[39]

In her motion for reconsideration, Atty. Miñon-Bañares denied any knowledge of the scheme concocted by Atty. Bañares and complainant. She claimed that to presume that she knew about the transactions would be speculation. She argued that she was not involved in any legal transactions with the Corporation due to the prohibition on private practice with respect to elected officials, such as municipal mayor. She also claimed that she did not act as a dummy of the Corporation in acquiring free patent titles of the subject lots. She claimed that the only mistake she made, if at all, was that she accepted the call of complainant and talked to him. Lastly, she also argued

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32 Id. at 150.
33 Id. at 152-159.
34 Id. at 164-174.
35 A.C. No. 7231, October 1, 2019, 921 SCRA 161.
36 A.C. No. 10933, November 3, 2020.
37 *Rollo*, pp. 162-163 and 176-177.
38 A.M. No. RTJ-15-2438, September 2, 2020.
39 *Rollo*, pp. 153-154.

that the Report and Recommendation tackled issues not raised in the complaint.[40]

The Court's Ruling

The Court adopts the findings of the Investigating Commissioner and the IBP Board but modifies the recommended penalty.

The Court reiterated in *Luna v. Galarrita*[41] that:

> Those in the legal profession must always conduct themselves with honesty and integrity in all their dealings.
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> x x x Members of the bar took their oath to conduct themselves "according to the best of [their] knowledge and discretion with all good fidelity as well to the courts as to [their] clients[,]" and to "delay no man for money or malice."
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> These mandates apply especially to dealings of lawyers with their clients considering the highly fiduciary nature of their relationship.[42]

It bears to emphasize that the practice of law is a privilege burdened with conditions. A member of the Bar has the privilege and right to practice law over good behavior and can only be deprived of it for misconduct ascertained and declared by judgment of the Court after opportunity to be heard has afforded him. Without invading any constitutional privilege or right, an attorney's right to practice law may be resolved by a proceeding to suspend or disbar him/her, based on conduct rendering him/her unfit to hold a license or to exercise the duties and responsibilities of a lawyer. However, in consideration of the gravity of the consequences of the disbarment or suspension of a member of the Bar, the Court has consistently held that a lawyer enjoys the presumption of innocence, and the burden of proof rests upon the complainant to satisfactorily prove the allegations in his/her complaint through substantial evidence.[43]

In this case, complainant has several allegations against respondents. *First*, he alleges that respondents misappropriated the funds he had entrusted to them in order to purchase the subject lots. *Second*, he alleges that respondents registered the subject lots under Atty. Bañares's name so that it may be eventually transferred to the Corporation. *Lastly*, he alleges that Atty.

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40 Id. at 166 and 168.
41 763 Phil. 175 (2015).
42 Id. at 184.
43 *Lampas-Peralta v. Ramon*, 848 Phil. 277, 283 (2019).

Miñon-Bañares committed unauthorized practice of law by actively participating in the legal representations of their law firm while serving as an incumbent municipal mayor.

These alleged wrongdoings violate Rule 1.01 and Canon 9 of the CPR. Rule 1.01 states that a lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct. Pursuant to this Rule, "members of the Bar must always conduct themselves in a way that promotes public confidence in the integrity of the legal profession."[44]

On the other hand, Canon 9 states that a lawyer shall not, directly or indirectly, assist in the unauthorized practice of law. In *Noe-Lacsamana v. Busmente*,[45] the Court held that:

> The lawyer's duty to prevent, or at the very least not to assist in, the unauthorized practice of law is founded on public interest and policy. Public policy requires that the practice of law be limited to those individuals found duly qualified in education and character. The permissive right conferred on the lawyer is an individual and limited privilege subject to withdrawal if he [or she] fails to maintain proper standards of moral and professional conduct. The purpose is to protect the public, the court, the client, and the bar from the incompetence or dishonesty of those unlicensed to practice law and not subject to the disciplinary control of the Court. It devolves upon a lawyer to see that this purpose is attained. Thus, the canons and ethics of the profession enjoin [the lawyer] not to permit his or her professional services or name to be used in aid of, or to make possible the unauthorized practice of law by, any agency, personal or corporate. And, the law makes it a misbehavior on his part, subject to disciplinary action, to aid a layman in the unauthorized practice of law.[46]

Death of one of the respondents; desistance of complainant

At the outset it must be pointed out that Atty. Bañares passed away while the administrative case was pending. As stated earlier, a Manifestation was filed with the IBP Commission, informing that Atty. Bañares had passed away. It must be underscored that disbarment proceedings are personal to the lawyer involved.[47]

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44 *Sison, Jr. v. Camacho*, 777 Phil. 1, 11 (2016).
45 677 Phil. 1 (2011).
46 Id. at 6. (Citation omitted)
47 *Sotto v. De Guia*, 187 Phil. 268, 269 (1980).

In *Home Guaranty Corporation v. Tagayuna*,[48] the Court dismissed the complaint against therein respondent lawyer in view of his death during the pendency of the case. It is settled that the death of a respondent in an administrative case, before its final resolution, is a cause for its dismissal.[49] Similarly, in *Orijuela v. Rosario*,[50] therein respondent lawyer died during the pendency of the administrative complaint. The Court declared the case moot and academic and the administrative complaint against said member of the Bar was consequently dismissed.

Accordingly, with respect to Atty. Bañares, the Court finds that the case filed against him regarding the misappropriation of a client's funds and the nefarious scheme to circumvent the laws regarding public land, should be dismissed due to his death. Since this is a personal action, the case must be dismissed. *Actio personalis moritur cum persona*.[51]

Therefore, the issues left to be resolved are whether Atty. Miñon-Bañares was complicit with the nefarious scheme of Atty. Bañares in using himself as a dummy so that the Corporation may eventually own public lands and whether Atty. Miñon-Bañares committed unauthorized practice of law.

It must be underscored that the filing of the affidavit of desistance shall not result to the dismissal of the complaint against Atty. Miñon-Bañares. Notably, complainant's desistance or withdrawal of the complaint does not put an end to the administrative proceedings. "A case of suspension or disbarment may proceed regardless of interest or lack of interest of the complainant. What matters is whether, on the basis of the facts borne out by the record, the charge of deceit and grossly immoral conduct has been proven."[52]

Public land application by a lawyer on behalf of a corporation

The Court finds that the allegation regarding the misappropriation of funds by Atty. Miñon-Bañares was not established with substantial evidence. Respondents explained that they had fully paid the sellers for the subject lots. Atty. Miñon-Bañares presented the acknowledgment receipt[53] and the

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48 A.C. No. 13131, February 23, 2022.

49 See *Spouses Buffe v. Sec. Gonzales*, 797 Phil. 143, 149-150 (2016); *Caoile v. Macaraeg*, 760 Phil. 578, 585 (2015), citing *Apiag v. Cantero*, 335 Phil. 511, 526 (1997).

50 201 Phil. 45 (1982).

51 See *Pelejo v. Zaballero*, 208 Phil. 390, 392 (1983).

52 *Ylaya v. Gacott*, 702 Phil. 390, 419 (2013), citing *Bautista v. Bernabe*, 517 Phil. 236, 241 (2016).

53 *Rollo*, p. 59.

Sinumpaang Salaysay which provided that the sellers had been fully paid by respondents in the sale of the subject lots. Even complainant has confirmed that the full payment of the sale price had been paid to the sellers.[54]

However, the nefarious scheme at hand is not the failure to pay the purchase price for the subject lots. Instead, the scheme involves the misrepresentation of Atty. Bañares that he was the buyer of the subject lots in his application for free patent when, in reality, they were only being held in favor of the Corporation and, eventually, the Corporation would become the registered owner thereof, in contravention of the prohibition on public land application by a corporation.

Lands covered by a free patent is still part of the public domain as belonging to the State.[55] Thus, an applicant for a free patent does not claim the land as his or her private property, but recognizes that the land is still part of the public domain.[56] What divests the State of its title to the land is the issuance of the patent and its subsequent registration in the Office of the Register of Deeds. As such, registration is the operative act that would bind the land and convey ownership to the applicant.[57]

However, as provided in Sec. 3, Article XII of the Constitution, a private corporation is prohibited from applying for registration on land of the public domain. In *Republic v. T.A.N. Properties, Inc.*,[58] the Court explained the rationale why the Constitution prevents corporations from applying for registration of public land, to wit:

> In actual practice, the constitutional ban strengthens the constitutional limitation on individuals from acquiring more than the allowed area of alienable lands of the public domain. Without the constitutional ban, individuals who already acquired the maximum area of alienable lands of the public domain could easily set up corporations to acquire more alienable public lands. An individual could own as many corporations as his means would allow him. An individual could even hide his ownership of a corporation by putting his nominees as stockholders of the corporation. The corporation is a convenient vehicle to circumvent the constitutional limitation on acquisition by individuals of alienable lands of the public domain.
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> The constitutional intent, under the 1973 and 1987 Constitutions, is to transfer ownership of only a limited area of alienable land of the public domain to a qualified individual. This constitutional intent is safeguarded

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54 Id. at 99.
55 *Unciano v. Gorospe*, 859 Phil. 466, 474 (2019).
56 *Valdez v. Heirs of Antero Cabatas*, G.R. No. 201655, August 24, 2020, 946 SCRA 227, 241.
57 *Unciano v. Gorospe*, supra.
58 578 Phil. 441 (2008).

> by the provision prohibiting corporations from acquiring alienable lands of the public domain, since the vehicle to circumvent the constitutional intent is removed. The available alienable public lands are gradually decreasing in the face of an ever-growing population. The most effective way to insure faithful adherence to this constitutional intent is to grant or sell alienable lands of the public domain only to individuals. This, it would seem, is the practical benefit arising from the constitutional ban.[59]

In the same case, the Court clarified the only instance when a corporation can apply for registration of a land – when it is already considered as private land. It was underscored that "open, exclusive, and undisputed possession of alienable land for the period prescribed by law created the legal fiction whereby the land, upon completion of the requisite period, *ipso jure* and without the need of judicial or other sanction ceases to be public land and becomes private property."[60] It is only when the land becomes private, that a corporation may apply for its registration.

Given this, private corporations may not acquire lands which are part of the public domain, such as those covered by free patents.[61] Any attempt to circumvent this prohibition on ownership of lands of public domain violates the Constitution. Evidently, it was Atty. Bañares who became the buyer of the subject lots and free patents were issued under his name because the Corporation, as a juridical entity, cannot own lots of public domain. Atty. Bañares even admitted to registering the subject lots under his name in a scheme devised to hold the land for the Corporation. He would register the subject lots under his name, wait for the lapse of five-year period, and then transfer the lots to the Corporation. The pertinent paragraphs in Atty. Bañares's Comment provides:

> i. Subsequently, complainant instructed answering respondent to prepare sale documents of lot 89 in favor of his girlfriend, Ma. Cristina W. Tena, and the sale documents of lots 92 and 94 in the name of the answering respondent.
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> j. Initially, answering respondent expressed opposition to the use of his name in the documents but was eventually prevailed upon to agree, for the complainant's convenience.
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> k. Thus, the sale documents were prepared in accordance with the complainant's instructions.
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59 Id. at 459-460, citing *Chavez v. Public Estates Authority*, 433 Phil. 506, 559 (2002).
60 Id. at 460-461.
61 Id. at 460-462.

16. After about a year of constant follow-ups, discussions, pleas, and representations with concerned government agencies, the applications for free patents were approved;

17. The purchase transactions of Lots 89, 92[,] and 94 are already closed and completed transactions. FREE PATENTS for said [Lots 89, 92, and 94] have already been issued, consistent with the desire of McKinney.
x x x

18. x x x

x x x x

b. The transfer of lots 92 and 94 to McKinney or his corporation is never an issue;

c. **Respondents did not refuse to execute deeds of conveyance of lots 92 and 94 in favor of McKinney or his corporation**; they assured McKinney that answering respondent will execute the deeds of conveyance at the proper time. They explained to McKinney that encumbrance or conveyance of properties covered by FREE PATENTS, like lots 92 and 94, are prohibited within five (5) years from issuance of the free patents;

d. They do not want to violate the law;

e. **At the risk of being repetitive, respondents repeatedly assured McKinney that answering respondent will execute the deeds of conveyance after the lapse of the 5-year prohibited period to encumber and dispose of the properties covered by the FREE PATENT, in favor of McKinney or his corporation[.]**[62] (Emphases supplied)

Atty. Bañares admitted to appointing himself as the buyer of the subject lots and subsequently registering them under his name contrary to law. He likewise admitted the same in his consolidated position paper in the IBP. These statements are considered as judicial admissions which need not be proved. Thus, no further evidence is needed as to Atty. Bañares's acts of misrepresentation as to the true buyer and predecessor-in-interest of the subject lots. Atty. Bañares would register the lots under his name, wait for the five-year prohibition period lapse under the Public Land Act and then transfer the same to the Corporation. Essentially, Atty. Bañares acted as a dummy of the Corporation, so that the latter may eventually own the subject lots.

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62 *Rollo*, pp. 64; 74-75.

Accordingly, it must be determined whether Atty. Miñon-Bañares was complicit in this nefarious scheme of Atty. Bañares.

The Court answers in the affirmative.

Atty. Miñon-Bañares claims that she did not know about the scheme of registering the free patent titles under the name of Atty. Bañares. However, her Comment belies this position, as seen in the pertinent paragraphs below:

> m. Sometime later, complainant called up answering respondent and asked for help to have the titling expedited. Herein respondent informed complainant that she will talk to Atty. [Bañares] about it. After [the] processes, the Free Patent certificates [of title] of the three (3) lots were released by the Camarines Norte Register of Deeds and the Original Owner's Copy of the three (3) Free Patent [c]ertificates of [t]itle were given to complainant, and are now in his possession;
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> n. Thereafter, complainant called up herein respondent and asked her to tell co-respondent, Atty. [Bañares], to execute a deed of sale for Lots 92 and 94 in [favor] of Tinaga Resorts Corporation, which concern, she relayed to [Atty. Bañares] but the latter told her that it could not be done yet, because of the 5-year prohibition considering that the title issued is a free patent. Said reply was relayed to complainant[.]
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> x x x x
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> 21. Moreover, considering that respondent knew of complainant's and [Atty. Bañares's] disagreements, and since complainant had already given the funds for titling of the three (3) lots, she talked to complainant every time he would call her and ask the status of the titling process. Respondent would call [Atty. Bañares] in Manila, ask for the status of the titling of the three lots, and whatever updates she would know would be relayed to complainant.[63]

These statements prove that Atty. Miñon-Bañares is, at the very least, complicit in the misrepresentation committed by Atty. Bañares in applying for the free patent in violation of Rule 1.01 of the CPR. In fact, the foregoing shows that she conspired with her co-respondent, Atty. Bañares, in perpetrating the titling of the free patents under his name while he was holding the same for the Corporation. She was able to explain to complainant the status of the titling of the subject lots pursuant to the fraudulent arrangement undertaken by Atty. Bañares. Thus, she acted as the direct access of

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[63] Id. at 37 and 43.

complainant to Atty. Bañares who was committing the fraudulent scheme in working as a dummy for the corporation. In other words, the nefarious plan of circumventing the prohibition against corporations from owning public lands would not have been achieved were it not for the active participation of Atty. Miñon-Bañares in facilitating the transaction between complainant and Atty. Bañares.

Atty. Miñon-Bañares claims that the Report and Recommendation tackled the issue regarding the fraudulent registration of the free patents even though this issue was not raised in the complaint.[64] However, this argument is bereft of merit. Suffice it to state that the Court has the authority to investigate relevant issues pursuant to its disciplinary power, especially when the important details were provided in the complaint and the subsequent pleadings of both parties.[65] Accordingly, Atty. Miñon-Bañares violated Rule 1.01 of the CPR as she actively participated in the scheme to circumvent the prohibition of corporations from owning public lands.

In *Yap-Paras v. Paras*,[66] therein respondent lawyer was held administratively liable when he applied for the issuance of a free patent over the properties in issue despite his knowledge that the same had already been sold by his mother to therein complainant's sister. Moreover, it was determined that therein respondent committed deceit and falsehood in his application for free patent over said properties when he manifested under oath that he had been in actual possession and occupation of the subject properties even though these were continuously in the possession and occupation of therein complainant's family.[67] Therein respondent lawyer was penalized with a one year suspension. This penalty was aggravated, however, by his previous violation of the CPR.[68]

Unauthorized practice of law

The complaint also alleges that Atty. Miñon-Bañares committed unauthorized practice of law because she signed the acknowledgment receipts prepared by complainant for the money which served as payment for the subject lots.

As a defense, Atty. Miñon-Bañares claims that she left the duty of ministering to clients to Atty. Bañares and the rest of the lawyers of their firm.

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64 Id. at 180.

65 *Elanga v. Pasok*, A.C. No. 12030, September 29, 2020; see *Office of the Court Administrator v. Paderanga*, 505 Phil. 149, 154 (2005), citing *Pineda v. Pinto*, 483 Phil. 243, 252 (2004).

66 491 Phil. 382 (2005).

67 Id. at 391.

68 Id. at 393.

She merely followed up on the status of the processing of the free patents. She claims coordinating between complainant and Atty. Bañares. She also answered queries regarding non-legal matters from the complainant without additional fee. Further, she claimed that even complainant acknowledged her role as a broker since, on the face of the receipt, it provides that she was signing for the benefit of the seller.[69]

The Court finds Atty. Miñon-Bañares liable for committing the unauthorized practice of law, which violates Canon 9 of the CPR.

Sec. 90(a) of the LGC prohibits mayors, like Atty. Miñon-Bañares, from practicing their profession or engaging in any occupation other than the exercise of their functions as local chief executives. As stated in *Fajardo v. Alvarez*,[70] practice of law is "an activity, in or out of court, which requires the application of law, legal procedure, knowledge, training and experience." It includes "[performing] acts which are characteristic of the [legal] profession" or "[rendering] any kind of service" which "requires the use in any degree of legal knowledge or skill."[71]

Several circumstances show that Atty. Miñon-Bañares rendered legal services for complainant while serving as municipal mayor, which contravened Sec. 90(a) of the LGC. She followed up on the status of the registration of the free patents with the handling lawyer, Atty. Bañares.[72] She also signed the acknowledgment receipts indicating receipt of the money for the land purchase transactions.[73] She accommodated complainant's calls and answered queries, without a fee, and even reminded him of the five-year prohibition on the free patents issued.[74] These foregoing acts, which were committed while she was a municipal mayor, are characteristics of the legal profession and requires the use of legal knowledge or skill.

The fact that Atty. Miñon-Bañares answered complainant's queries regarding the titling of the properties, including status updates on pending matters are characteristics of legal practice. Even Rule 18.04, Canon 18 of the CPR recognizes the same act as a duty of a lawyer because it mandates that a lawyer shall keep the client informed of the status of their case. The foregoing acts taken together with the fact that she signed the acknowledgment receipts for the money used for the purchase of the subject

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69 *Rollo*, pp. 142; 178-185.
70 785 Phil. 303 (2016).
71 Id. at 315, citing *Lingan v. Calubaquib*, 737 Phil. 191, 203 (2014) and *Monsod v. Cayetano*, 278 Phil. 235, 242 (1991).
72 *Rollo*, pp. 37 and 43.
73 Id. at 16-22.
74 Id. at 42-44.

lots are more than substantial evidence that Atty. Miñon-Bañares was rendering legal services for complainant and the Corporation.

Atty. Miñon-Bañares's defense that she was acting as a broker, and not as complainant's lawyer, is specious. Rule 15.08 of the CPR instructs that a lawyer is mandated to inform the client whether the former is acting as a lawyer or in another capacity. The rationale for this provision is that certain ethical considerations governing the attorney-client relationship may be operative in one and not in the other.[75] In this case, there was no express statement or agreement with complainant that Atty. Miñon-Bañares was merely acting as a broker, and not as a lawyer. Indeed, it is confusing for complainant because it is not clear whether Atty. Miñon-Bañares was offering her services as a broker or as a lawyer.

In *Cambaliza v. Cristal-Tenorio*[76] (*Cambaliza*), the Court underscored that a lawyer should not engage or assist in the unauthorized practice of law. Doing otherwise would violate the provisions of the CPR, to wit:

> The lawyer's duty to prevent, or at the very least not to assist in, the unauthorized practice of law is founded on public interest and policy. Public policy requires that the practice of law be limited to those individuals found duly qualified in education and character. The permissive right conferred on the lawyer is an individual and limited privilege subject to withdrawal if he fails to maintain proper standards of moral and professional conduct. The purpose is to protect the public, the court, the client, and the bar from the incompetence or dishonesty of those unlicensed to practice law and not subject to the disciplinary control of the Court. It devolves upon a lawyer to see that this purpose is attained. Thus, the canons and ethics of the profession enjoin him not to permit his professional services or his name to be used in aid of, or to make possible the unauthorized practice of law by, any agency, personal or corporate. And, the law makes it a misbehavior on his part, subject to disciplinary action, to aid a layman in the unauthorized practice of law.[77]

Liabilities of respondents

The facts and evidence herein reveal that Atty. Miñon-Bañares failed to live up to her duties as a lawyer in consonance with the strictures of the lawyer's oath and the CPR.

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75 *Villatuya v. Tabalingcos*, 690 Phil. 381, 395 (2012).
76 478 Phil. 378 (2004).
77 Id. at 389.

In *Stemmerik v. Mas*,[78] therein respondent was disbarred for advising therein complainant that a foreigner could legally and validly acquire real estate in the Philippines. Worse, he prepared spurious documents that he knew were void and illegal to effectuate such nefarious transfer to a foreigner. In said case, the Court stated:

> A lawyer who resorts to nefarious schemes to circumvent the law and uses his legal knowledge to further his selfish ends to the great prejudice of others, poses a clear and present danger to the rule of law and to the legal system. He does not only tarnish the image of the bar and degrade the integrity and dignity of the legal profession, he also betrays everything that the legal profession stands for.
>
> It is respondent and his kind that give lawyering a bad name and make laymen support Dick the Butcher's call, "Kill all lawyers!" A disgrace to their professional brethren, they must be purged from the bar.[79]

In another case, *Coronel v. Cunanan*,[80] the Court imposed the penalty of suspension of one year from the practice of law against therein respondent who advised his client to circumvent the process of extrajudicial settlement of estate and resort to direct registration of the titles and to bypass some of the heirs, to wit:

> Although the respondent outlined to the complainant the "ordinary procedure" of an extrajudicial settlement of estate as a means of transferring title, he also proposed the option of "direct registration" despite being fully aware that such option was actually a shortcut intended to circumvent the law, and thus patently contrary to law. The transfer under the latter option would bypass the immediate heirs of their grandparents (*i.e.*, the complainant's parent and her [co-heirs'] parents), and consequently deprive the Government of the corresponding estate taxes and transfer fees aside from requiring the falsification of the transfer documents. He assured that he could enable the direct transfer with the help of his contacts in the Office of the Register of Deeds and other relevant agencies of the Government, which meant that he would be bribing some officials and employees of those offices. The proposal of "direct registration" was unquestionably unlawful, immoral and deceitful all at once.[81]

On the other hand, with respect to the unauthorized practice of law, in *Plus Builders, Inc. v. Revilla, Jr.*,[82] the Court imposed the penalty of two years suspension from the practice of law because therein respondent, among others, allowed non-lawyers in his law firm to render legal services. Similarly, in

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78 607 Phil. 89 (2009).
79 Id. at 99.
80 766 Phil 332 (2015).
81 Id. at 338.
82 533 Phil. 250 (2006).

Cambaliza, the Court imposed the penalty of six months suspension from the practice of law on therein respondent because she abetted and aided her husband, who is not a lawyer, to represent himself to the public as a lawyer who renders legal services.

In this case, Atty. Miñon-Bañares committed two offenses which violated Rule 1.01 and Canon 9 of the CPR, for participating in the nefarious scheme to circumvent the prohibition on public land application by a corporation and engaging in the unauthorized practice of law. This Court deems it proper to impose upon her the penalty of two years suspension from the practice of law.

As the Court held in *Gonzales v. Bañares*,[83] lawyers are bound to respect and uphold the law at all times, thus:

> The Court must reiterate that membership in the legal profession is a privilege that is bestowed upon individuals who are not only learned in law, but also known to possess good moral character. Lawyers should act and comport themselves with honesty and integrity in a manner beyond reproach, in order to promote the public's faith in the legal profession. To declare that lawyers must at all times uphold and respect the law is to state the obvious, but such statement can never be over-emphasized. Since of all classes and professions, lawyers are most sacredly bound to uphold the law, it is then imperative that they live by the law.[84]

WHEREFORE, the administrative complaint against Atty. Jerry Bañares is **DISMISSED** by reason of his death prior to its final resolution.

On the other hand, Atty. Rachel S. Miñon-Bañares is **GUILTY** of violating Rule 1.01 and Canon 9 of the Code of Professional Responsibility. She is hereby **SUSPENDED** from the practice of law for a period of two (2) years with a **STERN WARNING** that a repetition of the same or similar acts shall be dealt with more severely. She is **DIRECTED** to report the date of her receipt of this Decision to enable the Court to determine when her suspension shall take effect.

Let a copy of this Decision be furnished the Office of the Bar Confidant to be entered into Atty. Rachel S. Miñon-Bañares's records. Copies shall likewise be furnished to the Integrated Bar of the Philippines and the Office of the Court Administrator for circulation to all courts concerned.

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83 833 Phil. 578 (2018).
84 Id. at 586-587.

SO ORDERED.

ALEXANDER G. GESMUNDO
Chief Justice

WE CONCUR:

MARVIC M.V.F. LEONEN
Senior Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

(On Leave)
RAMON PAUL L. HERNANDO
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

MARIO V. LOPEZ
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

(On Leave)
RICARDO R. ROSARIO
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

JAPAR B. DIMAAMPAO
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

ANTONIO T. KHO, JR.
Associate Justice

MARIA FILOMENA D. SINGH
Associate Justice