Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

SPOUSES WILLIAM THOMAS AND MARIFE YUKOT NILES,
Complainants,

- *versus* -

ATTY. CASIANO S. RETARDO, JR.,
Respondent.

A.C. No. 13229

Present:

CAGUIOA, ***Acting C.J.***,* *Chairperson,*
INTING,
GAERLAN,
DIMAAMPAO,** and
SINGH,** *JJ.*

Promulgated:

June 21, 2023

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D E C I S I O N

INTING, *J.*:

Before the Court is a complaint[1] filed by spouses William Thomas Niles (William) and Marife Yukot Niles (Marife) (collectively, complainants) before the Integrated Bar of the Philippines (IBP) against Atty. Casiano S. Retardo, Jr. (respondent) relative to his alleged preparation and subsequent notarizations of documents pertaining to a loan agreement that did not conform with Philippine laws, as well as his representation of conflicting interests in violation of the Code of Professional Responsibility (CPR).[2]

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* Designated Acting Chief Justice per Special Order No. 2980 dated June 15, 2023.
** On official business.
** On official business.
1 *Rollo*, pp. 4–14.
2 Id. at 4.

The Antecedents

Spouses Teodora and Jose Quirante (Sps. Quirante) wanted to obtain a loan from complainants, who were not versed in Philippine laws considering that William is an American citizen. Complainants thus sought the help of a lawyer to prepare the loan agreement. On April 25, 2011, the following persons appeared before respondent's law office to develop and sign a legally binding document that would govern their intended loan transaction, namely: complainants; their friend, Steven Connor (Connor), who introduced them to respondent; Sps. Quirante; and the latter's loan agents, Carmelo Obeja and Arnel Obeso.[3]

After asking the parties for the terms of their intended transactions, respondent prepared two documents: (1) an Acknowledgment Receipt[4] dated April 25, 2011; and (2) an undated Deed of Absolute Sale pertaining to a real property owned by Sps. Quirante, located in Brgy. Poblacion, Tagum City, Davao del Norte, and covered by Transfer Certificate of Title (TCT) No. T-263682 (subject property).[5]

The Acknowledgment Receipt reads as follows:

> I, TEODORA QUIRANTE, of legal age, Filipino, married, and a resident of Tagum City, do hereby acknowledge receipt of the sum of FOUR HUNDRED FIFTY THOUSAND PESOS (PHP450,000.00), from MARIFE G. YUKOT, as loan, secured by my real property located at Poblacion, Tagum City, identified as Lot No. 6-B-6, Psd-112319-033470, containing an area of 214 square meters, more or less, embraced in and covered by TCT No. T-263682.
>
> *The loan is subject to the following conditions*: [a] it is payable within six (6) months from date hereof; [b] earns interest of five percent (5%) per month, with the interest to be paid monthly without need of any demand; [c] late payment of monthly interest is subject to penalty, at 2.5% per month, with five (5) days as grace period; [d] *in case of non-payment of the loan after its due date, the real property put up as collateral will be considered as payment of and for the loan, including the accrued interest thereof, under the concept of dacion en pago; for this purpose, we agree to execute and deliver to Ms. Yukot the Deed of Absolute Sale involving subject property, with the condition that* [the] *same shall be effective only in case of default*; we however have the option to restructure our loan, provided we are updated in our interest payments.[6] (Italics supplied)

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3 Id. at 5 and 373.
4 Id. at 15.
5 Id. at 16.
6 Id. at 15.

Respondent explained to the parties that in case Sps. Quirante would fail to pay the loan secured by the subject property, complainants would have the right to take possession of the mortgaged lot.[7] Respondent then notarized the Acknowledgement Receipt after the parties signed it.[8]

On October 7, 2011, complainants consulted respondent regarding their concern about the possible default of Sps. Quirante in view of their missed payments. In turn, respondent prepared and notarized a Courtesy Letter[9] that reiterated the *pactum commissorium*[10] stipulation contained in the acknowledgment receipt, *viz.*:

> Dear Mr. & Mrs. Quirante:
>
> This is to formally inform you that the 6-month loan which you have taken from me x x x will become due and demandable on October 25, 2011.
>
> While it is true that the above-said loan is deemed renewed if- and only if- you are up-to-date in your payments of the monthly interests of your loan, such renewal is on a month to month basis. This means that *if you cannot pay one month interest, it would constitute default, and in that case, I shall have the option to invoke our agreement that in case of default, I can run after your property which you put up as collateral of your loan. Please understand that you have already executed and delivered to and in my favor a Deed of Absolute Sale involving the said collateral.*
>
> x x x x.[11] (Italics supplied)

On November 30, 2011, complainants again consulted respondent regarding Sps. Quirante's failure to comply with the loan agreement. Respondent then prepared and notarized a Final Demand Letter,[12] which again invoked the *pactum commissorium* stipulation:

> Dear Mr. & Mrs. Quirante:
>
> Subj [*sic*]: FINAL DEMAND TO PAY
>
> x x x x.

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7 Id. at 5.
8 Id.
9 Id. at 17.
10 A *pactum commissorium* is a prohibited stipulation that allows the mortgagee to acquire ownership of the mortgaged property without need of foreclosure. See Article 2088, New Civil Code.
11 *Rollo*, p. 17.
12 Id. at 18.

> I would also like to remind you that you have already executed a Deed of Absolute Sale in my favor, and *all I have to do is to register this document and secure a title over the above-said real property in my name.*
>
> x x x x.[13] (Italics supplied)

Despite the final demand, Sps. Quirante defaulted on their loan obligation.

On December 12, 2011, complainants asked respondent for the next step to take after Sps. Quirante failed to pay their loan obligation.[14] In response, respondent told complainants that they can take possession of the subject property. He then notarized the Deed of Absolute Sale[15] signed by the parties on April 25, 2011 and instructed complainants to proceed to the City Assessor's Office to obtain a tax clearance. Complainants did as instructed.[16] However, about half an hour after their consultation with respondent, the latter *via* text message informed complainants that Sps. Quirante came to his office and wanted to meet with them. When complainants returned to respondent's law office, Sps. Quirante asked for a 10-day extension within which to pay their loan obligation; complainants agreed.[17] Still, despite the lapse of the agreed extension, Sps. Quirante did not pay their obligation. Instead, complainants received a message from Sps. Quirante which stated that the latter could not pay the entire amount of the loan obligation.[18]

Consequently, complainants proceeded with the processing of the Deed of Absolute Sale pursuant to the loan agreement.[19]

Sometime in May 2012, Sps. Quirante filed a complaint before the Regional Trial Court (RTC) against complainants for Declaration of Nullity of TCT No. 142-2012002835 and Deed of Absolute Sale, Reconveyance, Quieting of Title, Damages, and Attorney's Fees. Thereafter, complainants attempted to engage respondent's services as counsel; however, the latter declined because of a "potential conflict of interest" which he did not fully explain.[20]

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13 Id.
14 Id. at 7.
15 Id. at 16.
16 Id. at 7.
17 Id.
18 Id. at 8.
19 Id.
20 Id.

When the trial court subpoenaed respondent to the civil case, respondent filed a manifestation[21] which expressed his reservation as to the request for subpoena based on the following grounds:

1) Mr. Quirante is among the petitioners in the case entitled, "In the Matter of the Petition for Cancellation of an Annotation on TCT No. T-4715, or in the alternative, for Court Authority to Close or Otherwise Dispose of the Property Covered by the Same" and docketed as Misc. Case No. 3220 (the Cancellation of TCT Annotation Case);

2) Respondent is the principal sponsor in the wedding of Jojo Quirante, son of Sps. Quirante; and

3) Respondent may not be able to assist complainants as it may violate the attorney-client relationship.[22]

Eventually, the RTC ruled[23] against complainants and nullified the loan agreement for being a *pactum commissorium*, which is prohibited under Article 2088 of the Civil Code of the Philippines, *viz.*:

> WHEREFORE, finding the complaint meritorious, as the act of defendant Marife G. Yukot violates Article 2088 of the Civil Code, being pactum commissorium, Transfer Certificate of Title No. 142-2012002835 in the name of Marife G. Yukot is hereby declared NULL and VOID.
>
> x x x x.
>
> SO ORDERED.[24] (Emphases omitted)

Hence, the present administrative complaint.[25]

Complainants alleged that respondent violated the CPR for preparing loan documents which are void for not being in accordance with the law and for representing conflicting interests. They further alleged that because of respondent's actuations, William suffered two separate mild strokes due to stress during the pendency of the civil case. Complainants likewise lost the

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[21] Id. at 19.
[22] Id. at 8-9.
[23] See RTC Decision dated May 24, 2015 in Civil Case No. 4302; id. at 20–25. Penned by Presiding Judge Virginia D. Tehano-Ang.
[24] Id. at 25.
[25] Id. at 4–14.

amount of ₱100,000.00 for attorney's fees in the civil case, ₱90,000.00 for the fees paid to the Bureau of Internal Revenue and the Register of Deeds which are not recoverable with the nullification of title, and ₱1,369,747.00 as loss of interest based on the original and agreed rate of interest.[26]

In his Verified Answer,[27] respondent denied the allegations against him and stated that when the parties arrived at his office, they had already agreed on the terms of the loan. Respondent averred that, despite his reservations about the legal ramifications of the agreement, he notarized it because it was freely and voluntarily entered into by the parties. In fact, Sps. Quirante even expressed that they were not worried about the deed of absolute sale because their daughter who was working abroad would help them pay the loan.[28] Anent the alleged conflict of interest, respondent asserted that he disclosed to complainants that Sps. Quirante were his previous clients. He added that he merely notarized the loan document; hence, he did not become the lawyer of either complainants or Sps. Quirante.[29]

The IBP's Report and Recommendation

In the Report[30] dated December 3, 2018, the Investigating Commissioner found that respondent violated the CPR by failing to apprise the parties to the loan document of the nature and legal consequences of a *pactum commissorium* provision[31] and for representing conflicting interests.[32] Accordingly, he recommended that respondent be meted out the penalty of suspension from the practice of law for a period of one (1) year:

> Based on the foregoing, this Commission recommends that Respondent be found liable for violation of the CPR and meted a penalty of suspension of one (1) year from the practice of law.[33]

In a Resolution[34] dated February 15, 2019, the IBP Board of Governors adopted the findings and recommendation of the Investigating Commissioner to suspend respondent from the practice of law for a period of one (1) year. Then, on January 23, 2021, the IBP Board of Governors

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26 Id. at 12 and 372.
27 Id. at 52-59.
28 Id. at 53-54.
29 Id. at 57.
30 Id. at 368-385. Penned by Investigating Commissioner Leland R. Villadolid, Jr.
31 Id. at 381-385.
32 Id. at 376-379.
33 Id. at 385.
34 Id. at 367.

passed Resolution No. CBD-2021-01-12[35] denying respondent's Motion for Reconsideration, *viz.*:

> RESOLVED to DENY, as it is hereby DENIED, the Motion for Reconsideration dated September 27, 2019 filed by respondent, there being no new reason and/or argument adduced to reverse the Resolution dated February 15, 2019 of the Board of Governors.[36] (Italics omitted)

In a letter[37] dated November 9, 2021, the IBP transmitted to the Court the Notice of Resolution of the IBP Board of Governors, as well as the records of the instant case.

The Issue

The issue for the Court's resolution is whether respondent should be held administratively liable for failing to apprise the parties to the loan document of the legal consequences of a *pactum commissorium* provision and for representing conflicting interests.

The Court's Ruling

The Court concurs with the findings of the IBP Board of Governors but *modifies* the recommended penalty to account for respondent's breach of Administrative Matter No. 02-8-13-SC, or the 2004 Rules on Notarial Practice (Notarial Rules).[38] Further, the Court applies the penalties provided under A.M. No. 22-09-01-SC[39] or the Code of Professional Responsibility and Accountability (CPRA) issued on May 14, 2023, which *repealed* the CPR.[40]

Needless to state, a lawyer owes his or her client undivided allegiance.[41] In fact, unlike other common relations, the lawyer's duty of loyalty to the client does not end even after the attorney-client relations are terminated. As such, the Court has incessantly reminded lawyers: "It behooves attorneys, like Caesar's wife, not only to keep inviolate the client's confidence, *but also to avoid the appearance of treachery and double-dealing*. Only thus can litigants be encouraged to entrust their secrets to their

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35 Id. at 461.
36 Id.
37 Id. at 460
38 2004 Rules on Notarial Practice, A.M. No. 02-8-13-SC, July 6, 2004.
39 Published on May 14, 2023 and took effect on May 29, 2023.
40 Sections 2 and 3, General Provisions, Code of Professional Responsibility and Accountability (CPRA).
41 *Arteaga v. Atty. Maderazo*, 431 Phil. 135, 143 (2002).

attorneys which is of paramount importance in the administration of justice."[42]

To maintain this degree of professionalism of the highest order, Sections 13 and 17, Canon III of the CPRA prohibits lawyers from representing conflicting interests subject to certain exceptions, *viz.*:

> **CANON III**
> **FIDELITY**
>
> Fidelity pertains to a lawyer's duty to uphold the Constitution and the laws of the land, to assist in the administration of justice as an officer of the court, and to advance or defend a client's cause, with full devotion, genuine interest, and zeal in the pursuit of truth and justice.
>
> x x x x.
>
> SECTION 13. *Conflict of interest.* – A lawyer shall not represent conflicting interests *except by written informed consent of all concerned given after a full disclosure of the facts.*
>
> There is conflict of interest when a lawyer represents inconsistent or opposing interests of two or more persons. The test is whether in behalf of one client it is the lawyer's duty to fight for an issue or claim, but which is his or her duty to oppose for the other client.
>
> x x x x.
>
> SECTION 17. *Prohibition against conflict-of-interest representation; prospective clients.* – In relation to prospective clients, the following rules shall be observed:
>
> (a) A lawyer shall, at the earliest opportunity, ascertain the existence of any conflict of interest between a prospective client and current clients, *and immediately disclose the same if found to exist.*
>
> In case of an objection by either the prospective or current client, the lawyer shall not accept the new engagement.
>
> (b) A lawyer shall maintain the private confidences of a prospective client even if no engagement materializes, and shall not use any such information to further his or her own interest, or the interest of any current client. (Italics supplied.)

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[42] Id. at 144, citing *Hilado v. David*, 84 Phil. 569, 579 (1949).

Record shows that respondent rendered legal services for the complainants on multiple occasions, and in all those instances, respondent failed to disclose to complainants that an attorney-client relationship previously existed between him and Mr. Quirante; and that he is even the principal sponsor in the wedding of the son of Sps. Quirante. Hence, respondent represented conflicting interest in violation of the CPRA. In an attempt to hide behind the protective veil of the limited liabilities of a notary public, respondent denied the existence of an attorney-client relationship between him and complainants, arguing that "notarization" is not tantamount to "legal representation." He thus stated that he cannot be held administratively liable for representing conflicting since no attorney-client relationship was formed when he simply notarized the documents relative to the parties' loan agreement.[43]

The Court, however, disagrees.

An attorney-client relationship commences from the moment the client seeks the attorney's advice upon a legal concern.[44] Moreover, the CPRA expressly provides that a lawyer-client relationship arises "when the client consciously, voluntarily and in good faith vests a lawyer with the client's confidence for the purpose of rendering legal services," and the lawyer agrees to render such services.[45] Thus, respondent's contention that he never represented complainants in an actual case before the court or other *fora*[46] will *not* exonerate him from a clear violation of Section 17, Canon III of the CPRA. It is well to stress that complainants consulted respondent on multiple instances, and in turn, respondent rendered the following legal services:

1. On April 25, 2011, respondent prepared and notarized the Acknowledgment Receipt[47] between complainants and Sps. Quirante.

2. On October 7, 2011, respondent advised complainants on their next course of action on the possible default of Sps. Quirante.[48] He also prepared and notarized the Courtesy Letter[49] of complainants addressed to Sps. Quirante reminding them of their obligations in the loan agreement.

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43 *Rollo*, p. 57.
44 *Atty. Constantino v. Atty. Aransazo, Jr.*, A.C. No. 9701, February 10, 2021.
45 Section 3, Canon 3 of the CPRA.
46 *Rollo*, pp. 57-59.
47 Id. at 15.
48 Id. at 377.
49 Id. at 17.

3. On November 25, 2011, respondent advised complainants regarding their demand for payment which was unheeded by Sps. Quirante, as well as drafted and notarized the final demand letter[50] of complainants to Sps. Quirante.[51]

4. On December 12, 2011, respondent, after the lapse of the grace period given in the final demand letter, advised complainants to enforce the *pactum commissorium* stipulation of loan agreement. He then notarized the undated Deed of Absolute Sale[52] and instructed complainants to obtain a tax clearance before the City Assessor's Office.[53]

On this note, the Court, in *Artezuela v. Atty. Maderazo*,[54] elucidated as follows:

> To be guilty of representing conflicting interests, a counsel-of-record of one party need not also be counsel-of-record of the adverse party. He does not have to publicly hold himself as the counsel of the adverse party, nor make his efforts to advance the adverse party's conflicting interests of record—although these circumstances are the most obvious and satisfactory proof of the charge. *It is enough that the counsel of one party had a hand in the preparation of the pleading of the other party, claiming adverse and conflicting interests with that of his original client. To require that he also be counsel-of-record of the adverse party would punish only the most obvious form of deceit and reward, with impunity, the highest form of disloyalty.*[55] (Italics supplied)

Respondent clearly represented conflicting interests when he advised complainants as to their course of action and even prepared the necessary documents relative to the former's claim against Sps. Quirante.[56]

Moreover, when Sps. Quirante filed a civil case against complainants, the latter tried to secure respondent's legal services. However, respondent refused and disclosed *for the first time* that his representation of complainants would come in conflict with his attorney-client relationship with Sps. Quirante.[57] In doing so, respondent not only violated the confidence resulting from an attorney-client relationship, he also committed

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50 Id. at 18.
51 Id. at 377.
52 Id. at 16.
53 Id. at 11 and 377.
54 *Artezuela v. Atty. Maderazo*, supra note 41.
55 Id. at 136.
56 *Rollo*, p. 378.
57 Id. at 8.

professional misconduct and brought discredit to the entire legal profession, which is a ground for suspension or removal from the practice of law under the Rules of Court.[58]

Even worse, respondent, despite knowing that a *pactum commissorium* stipulation is prohibited by law, prepared and notarized various documents that were all anchored on such illegal stipulation.[59] In other words, by his own actions, respondent *consciously*, not to mention, *repeatedly*, disregarded the law and settled jurisprudence pertaining to the prohibition against *pactum commissorium*. Verily, respondent violated Section 2, Canon III of the CPRA:

> SECTION 2. *The responsible and accountable lawyer.* – A lawyer shall uphold the Constitution, obey the laws of the land, promote respect for laws and legal processes, safeguard human rights, and at all times advance the honor and integrity of the legal profession.
>
> As an officer of the court, a lawyer shall uphold the rule of law and conscientiously assist in the speedy and efficient administration of justice.
>
> As an advocate, a lawyer shall represent the client with fidelity and zeal within the bounds of the law and the CPRA.

Respondent also violated Section 4(a), Rule IV of the Notarial Rules, *viz.*:

> SECTION 4. *Refusal to Notarize.* – A notary public shall not perform any notarial act described in these Rules for any person requesting such an act even if he tenders the appropriate fee specified by these Rules if:
>
> (a) *the notary knows or has good reason to believe that the notarial act or transaction is unlawful or immoral*[.] (Italics supplied)

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[58] Section 27, Rule 138 of the Rules of Court provides:

> Section 27. *Attorneys removed or suspended by Supreme Court on what grounds.* – A member of the bar may be removed or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before the admission to practice, or for a willful disobedience of any lawful order of a superior court, or for corruptly or willful appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.

[59] *Rollo*, p. 54.

It cannot be overemphasized that "notarization is not an empty, meaningless, routinary act."[60] Thus, lawyers who are commissioned as notaries public "must observe the basic requirements in the performance of their duties with utmost care."[61]

In sum, the Court finds respondent guilty of the serious offenses of intentional violation of the conflict of interest rules as well as gross ignorance of the law or disregard of basic rules and settled jurisprudence and violation of the Notarial Rules, *both* committed in evident bad faith, pursuant to Section 33(q), (h) and (p), Canon VI of the CPRA, respectively.

Under Section 37(a), Canon VI of the CPRA, the following sanctions may be imposed upon those found guilty of serious offenses: (a) disbarment; (b) suspension from the practice of law for a period *exceeding six (6) months*; (c) revocation of notarial commission and disqualification as notary public for not less than two (2) years; or (d) a fine exceeding ₱100,000.00. In connection thereto, Section 40 of Canon VI provides the guidelines in meting out the penalties when *multiple offenses* are involved:

> Section 40. *Penalty for multiple offenses. – If the respondent is found liable for more than one (1) offense arising from separate acts or omissions in a single administrative proceeding, the Court shall impose separate penalties for each offense.* Should the aggregate of the imposed penalties exceed five (5) years of suspension from the practice of law or P1,000,000.00 in fines, the respondent may, in the discretion of the Supreme Court be meted with the penalty of disbarment.
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> If a single act or omission gives rise to more than one (1) offense, the respondent shall still be found liable for all such offenses, but shall, nonetheless, only be meted with the appropriate penalty for the most serious offense. (Italics supplied.)

Considering the attendant circumstances and respondent's apparent lack of remorse, he is hereby meted out the following penalties for *each* offense that he committed:

(a) For intentional violation of the conflict of interest rules, the Court suspends respondent from the practice of law for a period of six (6) months and one (1) day;

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[60] *Yuchengco v. Atty. Angare*, A.C. No. 11892, June 22, 2020 (938 SCRA 633, 640), citing *Lustestica v. Bernabe*, 643 Phil. 1 (2010).

[61] Id.

(b) For gross ignorance of the law or procedure or the disregard of basic rules and settled jurisprudence *in bad faith*, the Court suspends respondent from the practice of law for a period of six (6) months and one (1) day; and

(c) For violation of the Notarial Rules *in bad faith*, the Court revokes respondent's notarial commission, *if still subsisting*, and disqualifies him from being commissioned as a notary public for a period of two (2) years.

WHEREFORE, the Court finds respondent Atty. Casiano S. Retardo, Jr. **GUILTY** of violating Sections 2, 13, and 17, Canon III of A.M. No. 22-09-01-SC, or the Code of Professional Responsibility and Accountability, as well as Section 4(a), Rule IV of A.M. No. 02-8-13-SC, or the 2004 Rules on Notarial Practice. Accordingly, the Court imposes the following sanctions against him:

(a) **SUSPENSION** from the practice of law for a period of six (6) months and one (1) day for intentional violation of the conflict of interest rules;

(b) **SUSPENSION** from the practice of law for a period of six (6) months and one (1) day for gross ignorance of the law or procedure or the disregard of basic rules and settled jurisprudence *in bad faith*; and

(c) **REVOCATION** of his notarial commission, *if still subsisting*, and **DISQUALIFICATION** from being commissioned as a notary public for a period of two (2) years for violation of the Notarial Rules *in bad faith*.

The Court likewise **STERNLY WARNS** respondent Atty. Casiano S. Retardo, Jr. that a repetition of the same or similar offense shall be dealt with more severely.

Respondent Atty. Casiano S. Retardo, Jr. is **DIRECTED** to file a Manifestation to the Court that his suspension has started, copy furnished all courts and quasi-judicial bodies where he has entered his appearance as counsel.

Let copies of this Decision be furnished to the Office of the Bar Confidant, to be appended to the personal record of respondent Atty. Casiano S. Retardo, Jr., as an attorney-at-law; to the Integrated Bar of the Philippines; and to the Office of the Court Administrator for dissemination to all courts throughout the country for their guidance and information.

SO ORDERED.

HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:

ALFREDO BENJAMIN S. CAGUIOA
Acting Chief Justice
Chairperson

SAMUEL H. GAERLAN
Associate Justice

(On official business)
JAPAR B. DIMAAMPAO
Associate Justice

(On official business)
MARIA FILOMENA D. SINGH
Associate Justice