



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **October 10, 2022** which reads as follows:*

“A.C. No. 13501 [formerly CBD Case No. 19-6099] (Benjamin Lazaga and Carmela Lazaga, complainants v. Atty. German A. Operiano, respondent). – This resolves the complaint for disbarment¹ filed on July 22, 2019 by Benjamin Lazaga and Carmela Lazaga (complainants) against Atty. German A. Operiano (respondent), charging the latter with gross negligence or incompetence in the handling of cases in violation of the Lawyer’s Oath and the Code of Professional Responsibility (CPR).

The Facts

Complainants claimed that respondent was their lawyer in three (3) separate ejectment cases against them, all filed before the Municipal Circuit Trial Court (MCTC) of Sto. Niño, Norala, and T’boli, South Cotabato from 2010 to 2016. They alleged that respondent represented himself to be an expert in law and court procedures and that they have winning cases. Thus, they engaged respondent’s services and paid the fees. They asserted that while they relied on respondent in handling their cases, they still regularly coordinated with him regarding the status of their cases. Unfortunately, however, they lost the ejectment cases, and their appellate remedies were dismissed. They claimed that respondent never explained to them the contents of the decisions and the appellate remedies undertaken and even refused to meet with them and answer their calls after the cases were decided against them. They added that it was only after they consulted with other lawyers and examined the records of the case that they learned that respondent failed to file on time the Answers to the ejectment complaints. Instead, respondent filed a Motion to Dismiss, and only belatedly filed a Motion to Extend the Filing of answer, Motion to Admit Defendant’s Answer, and other documents to justify his negligence.²

¹ Dated May 29, 2019. *Rollo*, pp. 1-11.

² See *id.* at 1-8 and 331-332.

pc/so

In his answer³ dated December 26, 2019, respondent denied being the complainants' counsel in the ejectment cases. He claimed that complainants engaged the services of Atty. Ernesto I. Catedral (Atty. Catedral), who was related to complainants, and Atty. Elnathan Sunny Emilio (Atty. Emilio) of the Catedral and Emilio Law Office. He argued that he only assisted in preparing the pleadings and research in the related cases before the Department of Agrarian Reform and in the petitions for *certiorari* in the ejectment cases. Further, he claimed that it was impossible for complainants to have engaged his services in 2010 as he attended the wake and burial of his mother on March 30, 2010, in San Jose De Buenavista, Antique and afterwards the graduation of his daughter in Manila on April 8, 2010.⁴

The IBP Proceedings

Due to the restrictions brought about by the Covid-19 pandemic, the Integrated Bar of the Philippines (IBP)-Commission on Bar Discipline (CBD) issued an Order⁵ dated July 24, 2020, directing the parties to submit their manifestations regarding their technological capabilities to participate in the required Mandatory Conference by videoconference and/or their willingness to waive the same and proceed with the submission of their respective position papers. None of the parties, however, complied with the directive. Thus, the IBP-CBD issued an Order⁶ dated November 4, 2021 directing the parties to submit their respective position papers within a non-extendible period of fifteen (15) days. Neither parties submitted their position papers, thus, the case was submitted for resolution.

In a Report and Recommendation⁷ dated January 24, 2022, the IBP Investigating Commissioner (IC) dismissed the disbarment complaint for lack of sufficient evidence to hold respondent administratively liable. The IBP-IC found that based on the submitted documents and pleadings,⁸ including the motion to dismiss adverted to by complainants, it was, in fact, Attys. Catedral and Emilio who prepared and signed the pleadings, not respondent. Thus, for all intents and purposes, it is apparent that the complainants' counsel of record and who actively handled the ejectment cases were Attys. Catedral and Emilio. Moreover, the IBP-IC observed that while respondent signed as co-counsel in the Petition for *Certiorari* (in the ejectment cases), all other

³ See Answer (with Motion to Admit); id. at 92-112.

⁴ See id. at 92-100. See also id. at 332-333.

⁵ Id. at 322-323. Signed by Commissioner Cesare Napolione S. Sta. Romana.

⁶ Id. at 324-325.

⁷ Id. at 330-337.

⁸ These include: Motion to Dismiss Complaint (id. at 113-119), Motion to Admit and Answer with Counterclaim (id. at 129-144), Motion to Dismiss Complaint (id. at 145-151), Supplemental Pleading to the Motion to Dismiss the Complaint (id. at 152-157), Urgent Motion to Suspend Proceedings/Trial in this Case on Ground of Prejudicial Question (id. at 158-165), Comment/Opposition (id. at 174-183), Notice of Appeal (id. at 184-185), Motion for Another Additional Extension of Time to Submit Memorandum of Appeal (id. at 186-187), and Motion for Reconsideration (id. at 188-192).

submissions and pleadings on appeal were likewise prepared and signed solely by Attys. Catedral and Emilio.⁹

This notwithstanding, the IBP-IC recommended that respondent be penalized with a fine of five thousand pesos (₱5,000.00) for failing to comply with the IBP-CBD's July 24, 2020 and November 4, 2021 Orders.¹⁰

In a Resolution¹¹ dated March 18, 2022, the IBP Board of Governors adopted and approved the IBP-IC Report and Recommendation dismissing the case against respondent and imposing upon him a fine of ₱5,000.00.

The Proceedings Before the Court

The Court notes without action respondent's (1) motion for extension of 20 days from March 24, 2022 within which to file position paper before the IBP-CBD; and (2) motion for second extension of 15 days from April 13, 2022 within which to file position paper before the IBP-CBD, both indorsed by letters dated July 14, 2022 and June 17, 2022, respectively, of Atty. Gil G. Taway IV, Overall Deputy Director, IBP, as the original records have already been transmitted to the Office of the Bar Confidant, together with the notice of resolution on May 11, 2022.

The Court's Ruling

The Court adopts and affirms the findings and recommendation of the IBP-IC, as adopted and approved by the IBP Board of Governors.

It is settled that 'to warrant disciplinary action against a lawyer, the complainants must present sufficient and convincing evidence to substantiate their accusations. Otherwise, the presumption that the lawyer is innocent of the charge prevails.'¹² In this regard, it is settled that the quantum of proof required to hold lawyers liable in administrative cases is through substantial evidence – which is more than a mere scintilla but is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.¹³ In *Reyes v. Nieva*,¹⁴ the Court explained that requiring this evidentiary threshold in administrative disciplinary cases is more in keeping with the policy considerations in the discipline of lawyers, viz:

Besides, the evidentiary threshold of substantial evidence — as opposed to preponderance of evidence — is more in keeping with the

⁹ See id. at 333-337.

¹⁰ See id. at 336-337.

¹¹ Id. at 328-329; signed by National Secretary Doroteo Lorenzo B. Aguila.

¹² *Mejares v. Romano*, 469 Phil. 619, 629 (2014).

¹³ *Reyes v. Nieva*, 794 Phil. 360, 378 (2016), citing *Foster v. Agtang*, 749 Phil. 576, 597 (2014).

¹⁴ 794 Phil. 360 (2016).

primordial purpose of and essential considerations attending this type of cases. As case law elucidates, “[d]isciplinary proceedings against lawyers are *sui generis*. Neither purely civil nor purely criminal, they do not involve a trial of an action or a suit, but is rather an investigation by the Court into the conduct of one of its officers. Not being intended to inflict punishment, it is in no sense a criminal prosecution. Accordingly, there is neither a plaintiff nor a prosecutor therein. It may be initiated by the Court *motu proprio*. Public interest is its primary objective, and the real question for determination is whether or not the attorney is still a fit person to be allowed the privileges as such. Hence, in the exercise of its disciplinary powers, the Court merely calls upon a member of the Bar to account for his actuations as an officer of the Court with the end in view of preserving the purity of the legal profession and the proper and honest administration of justice by purging the profession of members who by their misconduct have proved themselves no longer worthy to be entrusted with the duties and responsibilities pertaining to the office of an attorney. In such posture, there can thus be no occasion to speak of a complainant or a prosecutor.”¹⁵ (Emphasis and underscoring supplied)

Verily, the burden to prove the misconduct of a lawyer rests on the complainant to establish the allegations in his/her complaint. This is in accordance with an attorney enjoying the legal presumption that he/she is innocent of the charges against him/her until the contrary is proved, and that as an officer of the Court, he/she is presumed to have performed his/her duties in accordance with his/her oath. Reliance on mere allegations, conjectures, and supposition of an attorney’s alleged acts cannot be given credence absent any proof by substantial evidence.¹⁶

In this case, complainants failed to substantiate their allegation of gross negligence and incompetence on the part of respondent in defending their ejectment cases. Indeed, as aptly noted by the IBP-IC, whose findings the IBP Board of Governors adopted and approved, the documents and pleadings on record¹⁷ shows that it was Attys. Catedral and Emilio who acted as complainants’ counsel of record and who actively handled the ejectment cases against them before the MCTC and even on appeal. Thus, based on the evidence, any perceived negligence in the handling of complainant’s cases cannot clearly and convincingly be attributed to respondent to hold him administratively liable. Consequently, the disbarment case must be dismissed for lack of sufficient evidence.

¹⁵ Id. at 379-380; citations omitted.

¹⁶ See *Tan v. Alvarico*, A.C. No. 10933, November 3, 2020.

¹⁷ These include: Motion to Dismiss Complaint (id. at 113-119), Motion to Admit and Answer with Counterclaim (id. at 129-144), Motion to Dismiss Complaint (id. at 145-151), Supplemental Pleading to the Motion to Dismiss the Complaint (id. at 152-157), Urgent Motion to Suspend Proceedings/Trial in this Case on Ground of Prejudicial Question (id. at 158-165), Comment/Opposition (id. at 174-183), Notice of Appeal (id. at 184-185), Motion for Another Additional Extension of Time to Submit Memorandum of Appeal (id. at 186-187), and Motion for Reconsideration (id. at 188-192).

Further, Respondent signed as co-counsel of Atty. Catedral only in the following pleadings: Motion to Dismiss/Quash the Complaint in the Above-Captioned Cases on the Ground of Lack of Jurisdiction (id. at 122-124); Petition for Certiorari (id. at 193-207); Motion to Quash Writ of Execution (id. at 284-287); and Reply (id. at 304).

Nevertheless, records confirm that respondent disobeyed the July 24, 2020 and November 4, 2021 Orders of the IBP-CBD to submit his manifestation and position paper. Case law provides that a lawyer's failure to comply with the orders of the IBP without justifiable reason manifests disrespect of judicial authorities.¹⁸ It bears stressing that the compulsory bar organization was merely deputized by this Court to undertake the investigation of complaints against lawyers and thus, respondent's disobedience to the IBP constitutes as gross and blatant disrespect of the Court.¹⁹ This, in turn, constitutes a violation of Canon 11 and Rule 12.04, Canon 12 of the CPR,²⁰ which respectively read:

CANON 11 - A lawyer shall observe and maintain the respect due to the courts and to judicial officers and should insist on similar conduct by others.

x x x x

CANON 12 - A lawyer shall exert every effort and consider it his duty to assist in the speedy and efficient administration of justice.

x x x x

Rule 12.04 - A lawyer shall not unduly delay a case, impede the execution of a judgment or misuse court processes.

Case law instructs that '[a]t the minimum, members of the legal fraternity owe courts of justice respect, courtesy, and such other becoming conduct essential in the promotion of orderly, impartial, and speedy justice.'²¹ Verily, respondent has done the exact opposite; hence, he must be disciplined accordingly. In this regard, the Court finds it appropriate that respondent should be meted with the penalty of a fine in the amount of ₱5,000.00, as recommended by the IBP.

FOR THESE REASONS, the Court resolves to **ADOPT** and **APPROVE** the findings of fact, conclusions of law, and recommendation of the Integrated Bar of the Philippines (IBP) Investigating Commissioner in its Report and Recommendation dated January 24, 2022 in CBD Case No. 19-6099, which the IBP Board of Governors likewise adopted and approved. The complaint for disbarment filed by Benjamin Lazaga and Carmela Lazaga against Atty. German A. Operiano is **DISMISSED** for lack of merit.

Nonetheless, Atty. German A. Operiano is **GUILTY** of violation of Canon 11 and Rule 12.04, Canon 12 of the Code of Professional Responsibility for disobeying the Orders dated July 24, 2020 and November

¹⁸ See *Jacolbia v. Panganiban*, A.C. No. 12627, February 18, 2020; and *Domingo v. Sacdalan*, A.C. No. 12475, March 26, 2019.

¹⁹ See *Ojales v. Villahermosa III*, 819 Phil. 1, 7 (2017); and *Yu v. Palaña*, 580 Phil. 19, 28 (2008).

²⁰ See *Spouses Lopez v. Limos*, 780 Phil. 113, 122 (2016).

²¹ *Id.* at 123, citing *Canlu v. Aredonia*, 673 Phil. 1, 8 (2011).

4, 2021 of the IBP – Commission on Bar Discipline to submit his manifestation and position paper. He is hereby **ORDERED** to pay a fine in the amount of ₱5,000.00, which shall be made within ten (10) days from receipt of this Resolution, and **STERNLY WARNED** that a repetition of the same and similar infractions in the future shall be dealt with more severely.

SO ORDERED.”

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court

By:



MA. CONSOLACION GAMINDE-CRUZADA
Deputy Division Clerk of Court ^{mm 5/30}
31 MAY 2023

****BENJAMIN LAZAGA, ET AL. (reg)**

Complainants
Brgy. Poblacion, T-Boli
South Cotabato

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***CESARE NAPOLIONE S. STA. ROMANA (reg)**

Commissioner

***DOROTEO LORENZO B. AGUILA (reg)**

National Secretary
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Supreme Court, Manila

THE BAR CONFIDANT (x)

Supreme Court, Manila

***CASH DISBURSEMENT & COLLECTION**

DIVISION (x)

THE AUDITOR (x)

Supreme Court, Manila

***For this resolution only**

****with copy of the IBP Report and**

Recommendation dated January 24, 2022

Please notify the Court of any change in your address.

AC13501. 10/10/2022(336)URES