



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **January 25, 2023** which reads as follows:*

“A.C. No. 13285 [Formerly CBD Case No. 18-5562] (Ma. Lina A. Kono v. Atty. Bumin N. Pasiwen¹).—This is an administrative complaint² filed by Ma. Lina A. Kono against Atty. Bumin N. Pasiwen before the Integrated Bar of the Philippines (IBP) for alleged violation of the Code of Professional Responsibility for failing to properly handle a case which he accepted from complainant.

Complainant averred that on October 1, 2009, she engaged the services of respondent to handle the civil case she instituted against the Director of Land Management Bureau, Department of Environment and Natural Resources, the Register of Deeds of Taguig City (formerly Pasig City) and the Heirs of the late Shirly San Jose and Shirly Arcilla, docketed as Civil Case No. 72139-TG.

On October 18, 2017, complainant was surprised to receive a copy of an Order dated August 16, 2017 issued by the Regional Trial Court, Branch 266 of Taguig City where Civil Case No. 72139-TG was pending. The relevant portion of the Order reads:

When the case was called, plaintiff informed the Court that her counsel is not available to attend today’s hearing. Atty. Abucayon manifested that the presentation of plaintiff’s evidence has been repeatedly reset on account of the plaintiff. A perusal of the record shows that the pre-trial conference was terminated on February 12, 2014 and since then the plaintiff has never presented any witness to support the instant case.

WHEREFORE, premises considered, for failure to prosecute the instant case is DISMISSED.³

¹ Spelled as ‘PASIWIN’ in some parts of the records.

² *Rollo*, pp. 1-5.

³ *Id.* at 16.

Aggrieved with the outcome of Civil Case No. 72139-TG, complainant filed an administrative case against respondent for violating Canon 1, Rule 1.01; Canon 2, Rule 2.03; and Canon 15 of the Code. Complainant alleged that respondent was deceitful in handling Civil Case No. 72139-TG.⁴

The IBP Commission on Bar Discipline, on February 12, 2018, ordered respondent to file an Answer/Comment to the charge against him.⁵

On March 13, 2018, respondent filed his Answer⁶ denying the allegations against him. Respondent admitted that his services were engaged by complainant on October 1, 2014. He was not able to attend the scheduled hearing on August 16, 2017 because he was not duly notified of the said hearing. The Order of the trial court dated May 19, 2017 setting the case for hearing on August 16, 2017 was sent to complainant's previous counsel, and to complainant, but not to herein respondent.⁷ Atty. Pasiwen explains that he has been religiously attending the scheduled hearings in Civil Case No. 72139-TG, and that the delays in the prosecution of the case were mainly due to the absence of the presiding judge, or to complainant's non-cooperation in securing the documentary exhibits from her previous counsel, to wit:

Documentary Exhibit	Nature of the Exhibit / Summary of Hearing
Court Order dated Nov. 7, 2014	Atty. Pasiwen entered his appearance as counsel for Ma. Lina Kono in Civil Case No. 72139-TG. He moved for a resetting as he has to secure records of the case from complainant's previous counsel. The case was set for hearing on February 6, 2014. ⁸
Order dated Feb. 6, 2014	The scheduled February 6, 2014 was cancelled and reset to April 15, 2015 since the presiding judge was on sick leave. ⁹
Order dated April 15, 2015	Atty. Pasiwen was present, however, the hearing was cancelled and reset to June 5, 2015 since there was no return of the notice sent to the respondents of the case. ¹⁰

⁴ Id. at 2.

⁵ Id. at 26.

⁶ Id. at 33-36.

⁷ Id. at 33.

⁸ Id. at 38.

⁹ Id. at 39.

¹⁰ Id. at 40.

Order dated June 5, 2015	Hearing was reset to October 9, 2015 because complainant was not feeling well. ¹¹
Order dated October 9, 2015	Hearing was reset considering that complainant's documentary exhibits were still incomplete and still in possession of her previous counsel. ¹²
Order dated March 9, 2016	Hearing cancelled and reset to May 4, 2016 considering that the presiding judge was on leave. ¹³
Order dated May 4, 2016	Hearing cancelled and reset to August 17, 2016 in view of the absence of both counsels. ¹⁴
Notice of Hearing dated August 17, 2016	Both parties in the civil case were ordered to attend the pre-trial set on October 19, 2016. ¹⁵
Constancia dated October 19, 2016	Presiding judge was hearing cases in Makati, thus hearing was cancelled. ¹⁶
Constancia dated March 9, 2017	Hearing was cancelled and reset to May 18, 2017 considering that acting judge was attending a seminar. ¹⁷
Order dated May 19, 2017	Presiding judge was not available for a hearing, thus hearing was cancelled and reset to August 16, 2017. ¹⁸

Atty. Pasiwen emphasized that he did not abandon the case of complainant. He claimed that up to the time of writing of his Answer, the documentary exhibits of complainant necessary in the prosecution of her case are still with her previous counsel.¹⁹

Complainant filed a Reply²⁰ to Atty. Pasiwen's Answer and countered that respondent's allegation that he did not receive any notice of the scheduled hearing on August 16, 2017 is not acceptable. According to complainant, respondent was fully aware that an Order was issued by the court on May 19, 2017 resetting the hearing of the case on August 16, 2017.²¹

¹¹ Id. at 41.

¹² Id. at 42.

¹³ Id. at 43.

¹⁴ Id. at 44.

¹⁵ Id. at 45.

¹⁶ Id. at 46.

¹⁷ Id. at 47.

¹⁸ Id. at 37.

¹⁹ Id. at 35.

²⁰ Id. at 49-50.

²¹ Id. at 50.

The Commission on Bar Discipline issued a Notice of Mandatory Conference directing the parties to appear before it on April 26, 2018.²² Atty. Pasiwen appeared to represent himself, however, complainant appeared without counsel, thus was advised by the Commission to secure the services of counsel to represent her in the proceeding. The hearing was set to August 16, 2018.²³

During the August 16, 2018 mandatory conference, Atty. Pasiwen was not around. Thus, the hearing was further reset to October 17, 2018.²⁴ On October 17, 2018, the mandatory conference was again reset to November 7, 2018 due to complainant's failure to appear.²⁵ On November 7, 2018, both parties failed to appear. Thus, the Investigating Commissioner terminated the conference and gave each party a period of 10 days to submit their respective position papers.²⁶

On January 23, 2019, Atty. Pasiwen filed his verified Position Paper²⁷ dated January 17, 2019 and his Judicial Affidavit²⁸ dated January 17, 2019.

Report and Recommendation of the Integrated Bar of the Philippines

Citing Section 27, Rule 138 of the Rules of Court which provides:

Section 27. Disbarment or suspension of attorneys by Supreme Court; grounds therefor. – A member of the bar may be disbarred or suspended from his [or her] 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 [or her] conviction of a crime involving moral turpitude, or for any violation of the oath which he [or she] is required to take before admission to practice, or for a willful disobedience of any lawful order of a superior court, or for corruptly or willfully 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.

The Investigating Commissioner recommended the dismissal of the complaint in the absence of substantial evidence to show that respondent abandoned his duty to represent complainant in Civil Case No. 72139-TG or intentionally neglected the same.²⁹

²² Id. at 48.

²³ Id. at 55.

²⁴ Id. at 57.

²⁵ Id. at 58.

²⁶ Id. at 59.

²⁷ Id. at 62-71.

²⁸ Id. at 73-78.

²⁹ Id., unpaginated. Report and Recommendation of the Investigating Commissioner dated July 31, 2020, p. 10.

Canon 1, Rule 1.01 of the Code states that “*a lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.*” Deceitful conduct involves moral turpitude and includes anything done contrary to justice, modesty or good morals. It is an act of baseness, vileness, or depravity in the private and social duties which a person owes to humankind or to society in general, contrary to justice, honesty, modesty or good morals.³⁰ On the other hand, rules requiring candor, fairness and loyalty enjoin lawyers to be honest and truthful when dealing with their clients.

In this case, the Investigating Commissioner found that the acts of Atty. Pasiwen in handling the civil case of complainant did not amount to an evasion of duty.³¹ Documentary evidence show that the resettings of hearings for the presentation of evidence of complainant were caused by either the absence of the presiding judge, the lack of notice or attendance by the defendant therein, or the alleged necessity to secure records from complainant’s previous counsel, and were not due primarily to the fault of Atty. Pasiwen.³² The Investigating Commissioner thus found no basis to warrant the disbarment or disciplinary action of respondent Atty. Pasiwen.³³

Further, the Investigating Commissioner points out that there is likewise no basis to order Atty. Pasiwen to pay for the alleged cost of reviving Civil Case No. 72139-TG in the amount of PHP 200,000.00 since, as the trial court itself confirmed, the absence of Atty. Pasiwen during the August 16, 2017 hearing cannot be deemed intentional since Atty. Pasiwen was not given notice thereof.³⁴

On May 22, 2021, a Resolution was passed by the IBP Board of Governors in CBD Case No. 18-5562 resolving to approve and adopt the findings and recommendation of the Investigating Commissioner to dismiss the case, after finding the recommendation to be fully supported by the evidence on record and the applicable laws and rules.³⁵

Hence, this case is now before Us for final action pursuant to Section 12(c), Rule 139-B of the Rules of Court.

³⁰ Id., unpaginated. Report and Recommendation of the Investigating Commissioner dated July 31, 2020, pp. 6-9.

³¹ Id.

³² Id.

³³ Id.

³⁴ Id.

³⁵ Id., unpaginated. Notice of Resolution of the Integrated Bar of the Philippines Board of Governors.

Issue

The sole issue for this Court's resolution is whether Atty. Pasiwen should be held administratively liable based on the allegations on the Complaint.

Our Ruling

We adopt the findings and the recommendation of the IBP to dismiss the complaint for lack of merit.

Complainant alleged that Atty. Pasiwen violated the following canons of the Code:

- (a) Canon 1, Rule 1.01 – A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct;
- (b) Canon 2, Rule 2.03 – A lawyer shall not do or permit to be done any act designed primarily to solicit legal business; and
- (c) Canon 15 – A lawyer shall observe candor, fairness and loyalty in all his [or her] dealings and transactions with his [or her] clients.

Canon 1, Rule 1.01 requires the complainant in an administrative case to show categorically that the actions alleged in the complaint have amounted to a violation of the Code and were manifestly deceitful and dishonest.³⁶ We concur with the findings of the IBP that complainant failed to adduce substantial evidence to persuade this Court that Atty. Pasiwen committed unlawful, dishonest, immoral or deceitful conduct in the handling of Civil Case No. 72139-TG. The dismissal of the civil case cannot be ascribed to the negligence nor bad faith or deceitful conduct of Atty. Pasiwen. We note that, as per the findings of the trial court where the case was pending, Atty. Pasiwen was not notified of the hearing on August 16, 2017 since the order setting such hearing was served upon complainant and her former counsel. Moreover, We emphasize the findings of the IBP that the trial court also noted that there was no “pattern or scheme to delay the disposition of the case or a wanton failure to observe mandatory requirement of the rules”³⁷ on the part of the plaintiff to present evidence therein.

Similarly, complainant failed to substantiate her allegation that Atty. Pasiwen violated Canon 2, Rule 2.03 of the Code. Complainant did not present any evidence to establish and clearly illustrate before this Court the actions and/or omissions of Atty. Pasiwen which amount to a violation of the specified rule.

³⁶ *Overgaard v. Atty. Valdez*, 588 Phil. 422, 430-431 (2008).

³⁷ *Rollo*, unpaginated. Report and Recommendation of the Investigating Commissioner dated July 31, 2020, p. 8.

Lastly, Canon 15 of the Code provides that “a lawyer shall observe candor, fairness and loyalty in all his [or her] dealings and transactions with his [or her] client.” Necessity and public interest enjoin lawyers to be honest and truthful in dealing with their client. Lawyers owe fidelity to the cause of their client and shall be mindful of the trust and confidence reposed in them.³⁸ Complainant failed to adduce sufficient evidence to convince the IBP or this Court that Atty. Pasiwen violated this rule.

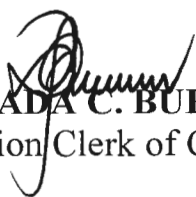
Time and again, We have reminded the public that in disbarment and suspension proceedings against lawyers in this jurisdiction, the burden of proof rests upon the complainant. This Court has held that “in consideration of the gravity of the consequences of the disbarment or suspension of a member of the bar, [W]e have 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 [or her] complaint through substantial evidence.” A complainant’s failure to dispense the same standard of proof requires no other conclusion than that which stays the hand of the Court from meting out a disbarment or suspension order.³⁹

In this case, there is a dearth of evidence to show the Atty. Pasiwen acted in a deceitful or dishonest manner, or that he lacked candor, fairness, and loyalty to warrant the imposition of disbarment, suspension or any similar sanction.

WHEEREFORE, the instant Complaint for disbarment against Atty. Bumin N. Pasiwen is **DISMISSED** for lack of merit.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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³⁸ *Overgaard v. Atty. Valdez*, supra at 431.

³⁹ *Tablizo v. Atty. Golangco*, A.C. No. 10636, October 12, 2020.

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