



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **September 12, 2022**, which reads as follows:*

“**A.C. No. 11374 (Mateo S. Montana v. Atty. Aurelio M. Diamante, Jr.)**.— Respondent Atty. Aurelio M. Diamante, Jr. (Atty. Diamante) faces a *Complaint*¹ for disbarment filed by complainant Mateo S. Montana (Montana) before this Court.

Montana averred that on 24 September 2014, he accompanied his aunt, Emilia Arrogante, to the Register of Deeds of Manila to seek the reconstitution of her lost Transfer Certificate of Title No. 249722. Upon inquiry, a security guard led them to Atty. Diamante, then Acting Deputy Registrar of Deeds of Manila, who informed them that he could personally process the reconstitution within three to six months for a fee of ₱25,000.00.²

Relying on Atty. Diamante’s assurance and representation, Montana paid him an initial fee of ₱10,000.00. The additional payments of ₱5,000.00 each followed on 24 October 2014, 27 November 2014, and 29 December 2014. Unfortunately, on 27 January 2015, Atty. Diamante disclosed that he could no longer process the reconstitution and offered to return the partial amount of ₱15,000.00 to Montana and his aunt, which they rejected.³

Montana’s repeated demands for Atty. Diamante to return the full amount of ₱25,000.00 were unheeded, prompting him to lodge the present *Complaint*⁴ for disbarment against respondent. Upon receipt of the said

¹ *Rollo*, pp. 1-5.

² See *Complaint*, *id.* at 1 and *IBP Report and Recommendation*, at 103-105).

³ *Id.* at 2 and 103-105.

⁴ *Id.* at 1-5.

Complaint, the Court referred the matter to the Integrated Bar of the Philippines (IBP) for investigation.⁵

For his part, Atty. Diamante maintained that his acts could not be deemed improper because he never assumed his duties as Acting Registrar of Deeds of Bais City due to severe depression. Moreover, he was dismissed from service in March 2015 for having been on absence without leave (AWOL).⁶

In due course, the IBP Investigating Commissioner issued his Report and Recommendation⁷ dated 23 May 2019, finding Atty. Diamante guilty of engaging in the unauthorized practice of law and of violating Rule 18.03⁸ of the Code of Professional Responsibility (CPR). The IBP Investigating Commissioner anchored his Report on Atty. Diamante's admission in his pleadings that he rendered legal services to Montana in exchange for the fee of ₱25,000.00 despite being employed as the Deputy Registrar of Deeds. He thus recommended that Atty. Diamante be suspended from the practice of law for five years.⁹

On 15 December 2019, the IBP Board of Governors (IBP Board) passed a Resolution, approving with modification the Report and Recommendation of the IBP Investigating Commissioner. It reduced the period of Atty. Diamante's suspension to six (6) months.¹⁰

Upon an assiduous review of the records, the Court finds that Atty. Diamante willfully engaged in an unauthorized practice of law. Accordingly, the IBP Report and Recommendation is hereby approved and adopted.

⁵ Id. at 2.

⁶ Id. at 28-33.

⁷ Id. at 103-105.

⁸ Rule 18.03 – A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

⁹ *Rollo*, p. 105.

¹⁰ Id. at 101-102.

As a general rule, government lawyers are prohibited from engaging in the private practice of their profession during their incumbency.¹¹ Apropos are the provisions of Section 7 (b) (2) of Republic Act (R.A.) No. 6713¹²—

Section 7. Prohibited Acts and Transactions. – In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:

x x x x

(b) *Outside employment and other activities related thereto.* – Public officials and employees during their incumbency shall not:

x x x x

(2) Engage in the private practice of their profession unless authorized by the Constitution or law, provided, that such practice will not conflict or tend to conflict with their official functions; or

x x x x

In the seminal case of *Lim-Santiago v. Atty. Sagucio*,¹³ the Court elucidated that a violation of R.A. 6713 also constitutes a violation of Rule 1.01 of Canon 1 of the Code of Professional Responsibility (CPR), which mandates that “(A) **lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.**” (Emphasis supplied.)

Withal, Memorandum Circular No. 17, series of 1986¹⁴ provides that no government officer or employee shall engage in any private business, profession or undertaking unless authorized in writing by the department head, viz.:

¹¹ See *Olazo v. Tinga*, A.M. No. 10-5-7-SC, 637 SCRA 1, 15 (2010).

¹² “AN ACT ESTABLISHING A CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES, TO UPHOLD THE TIME-HONORED PRINCIPLE OF PUBLIC OFFICE BEING A PUBLIC TRUST, GRANTING INCENTIVES AND REWARDS FOR EXEMPLARY SERVICE, ENUMERATING PROHIBITED ACTS AND TRANSACTIONS, AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF AND FOR OTHER PURPOSES,” approved on 20 February 1989.

¹³ 520 Phil. 538, 551-552 (2006).

¹⁴ MEMORANDUM CIRCULAR NO. 17 - REVOKING MEMORANDUM CIRCULAR NO. 1025 DATED NOVEMBER 25, 1977

Memorandum Circular No. 1025 dated November 25, 1977 “PROHIBITING ANY GOVERNMENT OFFICIAL AND EMPLOYEE FROM ACCEPTING PRIVATE EMPLOYMENT IN ANY CAPACITY WITHOUT PRIOR AUTHORITY OF THE OFFICE OF THE PRESIDENT”

Sec. 12. No officer or employee shall engage directly in any private business, vocation or profession or be connected with any commercial, credit, agricultural or industrial undertaking without a written permission from the head of Department: Provided, That this prohibition will be absolute in the case of those officers and employees whose duties and responsibilities require that their entire time be at the disposal of the Government

By his own admission, Atty. Diamante was the Acting Deputy Registrar of Deeds of the City of Manila when, without official authority, he accommodated Montana's request for legal assistance in exchange for a fee of ₱25,000.00. On this score, his Verified Position Paper¹⁵ dated 25 February 2019 is quite telling:

1. I used to be assigned as Acting Deputy Registrar of Deeds at the City of Manila sometime in August 2014 up to the end of January 2015;

2. In September 2014, I met the person of the complainant who had some other business transactions in the Register of Deeds aforesaid (sic). We had a short conversation and later then he confided his problem on (sic) the lost title. He sought my assistance on (sic) the recovery of the same through judicial process as (sic) a cadastral case.

3. I readily told him that I cannot handle it directly since I am employed with the Office, but **I can draft the petition as well as the other requirement in preparation for the filing of same with the appropriate court.**

x x x x

6. We then agreed on the fees which we pegged at Twenty-Five Thousand Pesos (P25,000).

7. He left P10,000 for my initial works which I told him to submit to me the necessary papers and documents that I may commence the drafting of the petition.

8. A month after we met again and he gave me another P5,000 and was followed by another P5,000 or a total of P20,000 for the same works. During one of our meetings, **I accompanied the complainant to a Barangay Captain at (sic) Sta. Ana whereby he has pending complaint. I made a representation with the Barangay Captain, Franklin Demonteverde to which the latter promised me that he act (sic) on the complaint filed by the complainant before his Office.** For such representation, I did not charge the complainant.

¹⁵ Rollo, pp. 86-91.

x x x x

10. In December 2014, complainant sent me P5,000 via private courier which I received, saying that it's for the aforesaid **legal consultations I rendered him**, but just the same, complainant has not provided me with the documents I was asking him for the subject cadastral case.¹⁶ (Emphasis supplied.)

Plain as day, Atty. Diamante's acts of drafting or preparing a petition and other requirements, acting as a legal representative before a *barangay* captain, and receiving the payment of attorney's fees from Montana without official permission are tantamount to an unauthorized practice of law.

In an attempt to be absolved from any liability, Atty. Diamante asseverates that he never assumed his duties as Acting Registrar of Deeds of Bais City due to severe depression and that he was dismissed from the service in March 2015 for having been on AWOL.¹⁷

Atty. Diamante is clutching at straws.

The foregoing asseverations are completely and demonstrably irrelevant to the present case considering that these developments took place after the occurrence of the acts complained of.

In *Lorenzana v. Fajardo*,¹⁸ the Court suspended a lawyer for a period of six months after he was found to have drafted pleadings and dealt with clients as private counsel while being employed as a Legal Officer V of the Manila Urban Settlement Office. Similarly, in *Catu v. Rellosa*,¹⁹ the Court suspended a lawyer for a period of six months when, despite holding office as a *Punong Barangay*, he represented clients in an ejectment case before the Metropolitan Trial Court (MTC) of Manila.

Accordingly, the Court perforce finds and so holds that Atty. Diamante must be meted out a penalty of suspension from the practice of law for a period of six months from receipt of this Resolution.

¹⁶ Id. at 86-87. Emphasis supplied.

¹⁷ Id. at 28-30.

¹⁸ 500 Phil. 382, 390 (2005).

¹⁹ 569 Phil. 539, 550 (2008).

Finally, the Court deems it proper to require Atty. Diamante's restitution of the amount of ₱25,000.00 to Montana in fealty to its ruling in *Murray v. Cervantes*,²⁰ thus—

Although the Court renders this decision in an administrative proceeding primarily to exact the ethical responsibility on a member of the Philippine Bar, the Court's silence about the respondent lawyer's legal obligation to restate the complainant will be both unfair and inequitable. No victim of gross ethical misconduct concerning the client's funds or property should be required to still litigate in another proceeding what the administrative proceeding has already established as the respondent's liability.

x x x x

In *précis*, the Court accords imprimatur to the IBP's conclusion that Atty. Diamante willfully engaged in an unauthorized practice of law, blatantly disregarding ethical boundaries.

WHEREFORE, the Court finds Atty. Aurelio M. Diamante, Jr. **GUILTY** of willfully engaging in the unauthorized practice of law. Thence, he is **SUSPENDED** from the practice of law for six (6) months, with a **STERN WARNING** that a repetition of the same or similar acts will be dealt with more severely.

This *Resolution* shall take effect immediately. Atty. Aurelio M. Diamante, Jr. is **DIRECTED** to **INFORM** this Court of the date of his receipt of this *Resolution* for the purpose of reckoning the period of his penalty.

Likewise, Atty. Aurelio M. Diamante, Jr. is ordered to return the amount of ₱25,000.00 to Mateo S. Montana, with a serious warning that his failure to do so will warrant the imposition of a more severe penalty. In conformity with the Court's ruling in *San Gabriel v. Sempo*,²¹ interest at the rate of six percent (6%) *per annum* is imposed on the said amount, which shall accrue from the time of Atty. Diamante's receipt of this Resolution until full satisfaction thereof.

Finally, let copies of this Resolution be furnished the Office of the Bar Confidant for the updating of Atty. Aurelio M. Diamante, Jr.'s personal record as an attorney; the Integrated Bar of the Philippines, for their information and

²⁰ 817 SCRA 1 (2017), citing *Luna v. Atty. Galarrita*, 763 Phil. 175 -195 (2015).

²¹ A.C. No. 12423, 26 March 2019.

guidance; and the Office of the Court Administrator, for dissemination to all the courts in the country.

SO ORDERED.”

By authority of the Court:

Mis-DC Batt
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court *JS 1/12/23*

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