



Republic of the Philippines
Supreme Court
Baguio City

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated April 12, 2023 which reads as follows:

“A.C. No. 10826 [Formerly CBD Case No. 18-55616] (Elmer J. Bolivar v. Atty. Nelson A. Loyola).—Before Us is a Complaint¹ dated June 24, 2015 filed by Elmer J. Bolivar (Bolivar) praying for the disbarment of Atty. Nelson Loyola (Atty. Loyola) for allegedly violating Rules 1.01 and 1.02, Canon 1, and Rules 11.03 and 11.04, Canon 11 of the Code of Professional Responsibility (CPR).

The Factual Antecedents

In a Complaint² subject of a different case, Bolivar alleged that as the authorized representative of West Negros College, Inc., he filed a case for Indirect Contempt against Atty. Loyola for improper conduct tending directly or indirectly, to impede, obstruct, or degrade the administration of justice based on Section 3(d), Rule 71 of the Rules of Court, before Branch 50, Regional Trial Court of Negros Occidental, Bacolod City. The proceedings were presided by Judge Roberto S. Chiongson.³

In Atty. Loyola’s Answer, he allegedly used disrespectful, offensive, intemperate, or highly derogatory language, such as “Judge Roberto S. Chiongson **acted with partiality** x x x”, “Judge Chiongson, practically lawyered for WNC when he **implanted evidence** x x x” and “[Judge Chiongson] acted wrongly in **suppressing the evidences** [sic] x x x”. Bolivar thus filed a “Motion to Impose on Defendant Atty. Nelson Loyola Appropriate Disciplinary Sanctions as Maybe [sic] Warranted Under [Sec.] 3, Rule 7 in Relation to [Sec.] 1, Rule 71 of the Revised Rules of Court.”⁴ The court found Atty. Loyola guilty of Direct Contempt and was sentenced to

¹ *Rollo*, Vol. I, pp. 1-10.

² *Id.*

³ *Id.* at 1.

⁴ *Id.* at 2-4.

suffer the penalty of imprisonment of seven days and pay a fine of PHP 2,000.00.⁵

Atty. Loyola resorted to filing motions for reconsiderations and appeals until it reached this Court, but to no avail. The Decision became final and executory on August 22, 2014.⁶ To this day, Atty. Loyola has not yet served his sentence.⁷

Hence, Bolivar filed a Complaint for Disbarment⁸ against Atty. Loyola. Bolivar alleged that as a responsible officer of the court, Atty. Loyola should turn himself in and serve his sentence. Citing *Siy v. National Labor Relations Commission*,⁹ Bolivar asserted that the grounds for holding a lawyer in contempt and for holding him administratively liable are separate and distinct from each other. Hence, despite the finality of the contempt proceedings against Atty. Loyola, he can still be administratively charged.¹⁰ Bolivar advanced that Atty. Loyola's use of disrespectful, offensive, intemperate, or highly derogatory language violated multiple canons and rules of the CPR.¹¹

In his Counter-Affidavit,¹² Atty. Loyola claimed that he meant no malice in his actions. He was merely doing his job of exposing wrongful practices in the judiciary. Further, Bolivar did not have personal knowledge of the facts stated in his Complaint-Affidavit, and his assertions are mere hearsay.

Report and Recommendation of the Integrated Bar of the Philippines

In a Report and Recommendation¹³ dated February 24, 2020, the Investigating Commissioner recommended Atty. Loyola's suspension from the practice of law, to wit:

WHEREFORE, in view of the forgoing, the undersigned commissioner recommends that Respondent Atty. Nelson A. Loyola be SUSPENDED from practice of law for ONE (1) YEAR for violating Canons 1 and 11 of the Code of Professional Responsibility and for his obstinate disobedience to the Lawful Order of the Court and Conviction for Direct Contempt of Court with a sentence of seven (7) days imprisonment before Bacolod City District Jail. Respondent is likewise given a STERN WARNING that repetition of the same offense shall be dealt with more severely.

⁵ Id. at 5.

⁶ Id. at 5-7.

⁷ Id. at 7.

⁸ Id. at 1-10.

⁹ 505 Phil. 265 (2005).

¹⁰ *Rollo*, p. 7.

¹¹ Id. at 9.

¹² Id. at 191-246.

¹³ *Rollo*, Vol. II, unpaginated. Report and Recommendation, pp. 1-13. Penned by Commissioner Erwin L. Aguilera.

RESPECTFULLY SUBMITTED.¹⁴

The Investigating Commissioner found that despite the finality of the judgment for Direct Contempt, Atty. Loyola failed and continuously fails to serve his sentence of seven days imprisonment, and such shows his willful disobedience to the order of the court. According to the Investigating Commissioner, this act is a grave affront to the legal profession, to the members of the bar and to the judiciary, which should be sufficient to penalize him to the greatest extent in order to deter others who might be inclined to follow his unlawful acts and willful and deliberate disobedience to the court.¹⁵

On the issue that Bolivar is not the real party-in-interest, and that he has no personal knowledge of the facts stated in his Complaint-Affidavit, and thus his assertions are hearsay, the Investigating Commissioner held that the procedural requirement observed in ordinary civil proceedings that only real party-in-interest must initiate the suit does not apply in disbarment cases.¹⁶

On October 24, 2020, the Integrated Bar of the Philippines (IBP) Board of Governors (Board) issued a Resolution¹⁷ overturning the findings and recommendations of the Investigating Commissioner, to wit:

RESOLVED to REVERSE and SET ASIDE, as it is hereby REVERSED and SET ASIDE, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, and instead the complaint is hereby recommended to be DISMISSED, considering that Atty. Nelson A. Loyola did not defy any order, as the court has yet to issue a warrant of arrest against the respondent at the time of filing of the complaint.¹⁸

Issue

Should Atty. Loyola be sanctioned for his failure to serve his sentence of seven days of imprisonment for his conviction of Direct Contempt.

Our Ruling

At the outset, We would like to emphasize that a disciplinary action is independent and separate from a proceeding for contempt. As We held in *In re Merdegia*:¹⁹

While the two proceedings can proceed simultaneously with each other, a contempt proceeding cannot substitute for a disciplinary proceeding for erring lawyers, and vice versa. There can be no substitution between the two

¹⁴ Id. Report and Recommendation, p. 13.

¹⁵ Id. Report and Recommendation, pp. 9-13.

¹⁶ Id.

¹⁷ Id. Notice of Resolution, unpaginated. Penned by National Secretary Roland B. Inting.

¹⁸ Id.

¹⁹ 723 Phil. 30 (2013).

proceedings, as contempt proceedings against lawyers, as officers of the Court, are different in nature and purpose from the discipline of lawyers as legal professionals. The two proceedings spring from two different powers of the Court.

The Court, in exercising its power of contempt, exercises an implied and inherent power granted to courts in general. Its existence is essential to the preservation of order in judicial proceedings; to the enforcement of judgments, orders and mandates of courts; and, consequently, in the administration of justice; thus, it may be instituted against any person guilty of acts that constitute contempt of court. Further, jurisprudence describes a contempt proceeding as penal and summary in nature; hence, legal principles applicable to criminal proceedings also apply to contempt proceedings. A judgment dismissing the charge of contempt, for instance, may no longer be appealed in the same manner that the prohibition against double jeopardy bars the appeal of an accused's acquittal.

In contrast, a disciplinary proceeding against an erring lawyer is *sui generis* in nature; it is neither purely civil nor purely criminal. Unlike a criminal prosecution, a disciplinary proceeding is not intended to inflict punishment, but to determine whether a lawyer is still fit to be allowed the privilege of practicing law. It involves an investigation by the Court of the conduct of its officers, and has, for its primary objective, public interest. Thus, unlike a contempt proceeding, the acquittal of the lawyer from a disciplinary proceeding cannot bar an interested party from seeking reconsideration of the ruling. Neither does the imposition of a penalty for contempt operate as *res judicata* to a subsequent charge for unprofessional conduct.

Contempt proceedings and disciplinary actions are also governed by different procedures. Contempt of court is governed by the procedures under Rule 71 of the Rules of Court, whereas disciplinary actions in the practice of law are governed by Rules 138 and 139 thereof. (Citations omitted.)²⁰

On the issue of failure to comply with the penalty imposed upon respondent, We affirm the findings of the IBP Board that at the time the complaint was filed, there is no evidence on record that a warrant of arrest has been issued, and therefore, Atty. Loyola cannot be said to be evading his arrest, or violating any order.

However, We find that Atty. Loyola violated Canon 11 of the CPR for using malicious language when he wrote in his pleadings that “Judge Roberto S. Chiongson acted with partiality x x x”,²¹ “Judge Chiongson, practically lawyered for WNC when he implanted evidence x x x”²² and “[Judge Chiongson] acted wrongly in suppressing the evidences [sic] x x x”.²³

Atty. Loyola should have resorted to proper legal forum and chosen the appropriate remedy. As previously ruled by this Court:

²⁰ Id. at 37-38.

²¹ *Rollo*, Vol. I, p. 2.

²² Id. at 3.

²³ Id.

It is settled that a lawyer who uses abusive or abrasive language shows disrespect to the court and disgraces the Bar. He then invites the exercise by the court of its disciplinary power as respect for the judicial office should always be observed and enforced.²⁴

Jurisprudence provides that “[t]he appropriate penalty to be imposed on an errant attorney involves the exercise of sound judicial discretion based on the facts of the case.”²⁵ Disbarment and suspension of an attorney are the most severe forms of disciplinary action; thus, they should be imposed with great caution.²⁶ While the Court will not hesitate to remove an erring lawyer from the Bar, where the evidence calls for it, the Court will also not disbar him or her where a lesser penalty will suffice to accomplish the desired end.²⁷ Thus, for violating Canon 11 of the CPR, We impose the penalty of reprimand with stern warning on Atty. Loyola.²⁸

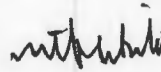
WHEREFORE, for violating Canon 11 of the Code of Professional Responsibility, Atty. Nelson A. Loyola is **REPRIMANDED** and **STERNLY WARNED** that repetition of the same or similar offense shall be dealt with more severely.

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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²⁴ *Uy v. Atty. Depasucat*, 455 Phil. 9, 16-17 (2003).

²⁵ *Judge Macias v. Atty. Selda*, 484 Phil. 10, 14 (2004).

²⁶ *Nuñez v. Atty. Astorga*, 492 Phil. 450, 457 (2005).

²⁷ *Lim v. Atty. Mejica*, 794 Phil. 560, 571 (2016).

²⁸ *Macapagal v. Young*, A.C. No. 9298, July 29, 2019; *Aseron v. Diño, Jr.*, 795 Phil. 1, 8 (2016); See also *Parks v. Misa, Jr.*, A.C. No. 11639, February 5, 2020.

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