



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 12, 2021 which reads as follows:

“A.C. No. 10947 [Formerly CBD Case No. 13-3872] – (HENRY C. KOKAM, complainant v. ATTY. ROMERO A. BONIEL, respondent). – Before Us is an administrative complaint¹ for disbarment filed by Henry C. Kokam (complainant) against Atty. Romero A. Boniel (respondent) for violation of Section 16, Rule 3 of the Rules of Court and Rule 10.01 of the Code of Professional Responsibility (CPR).

Facts

Respondent was the counsel of Peregrina Macua Vda. De Avenido (Peregrina) in the following cases:

- a) SP No. 3420-94, entitled “*In the Matter of the Intestate Estate of Eustaquio Avenido Sr.*” before the Regional Trial Court (RTC) of Davao City, Branch 13; and
- b) CA-G.R. SP No. 01290-MIN, entitled “*Peregrina Macua Vda. De Avenido v. Henry C. Ko Kam, et al.*” before the Court of Appeals (CA).²

Peregrina died on February 3, 2011.³

On September 26, 2011, respondent filed a “*Substitution of Party, Motion for Entry of Judgment/Finality of Order and for Survey*”

- over – eight (8) pages ...

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¹ *Rollo*, pp. 2-5.

² *Id.* at 94.

³ *Id.* at 11.

*Authority*⁴ in SP No. 3420-94, with the following explanation for belatedly informing the RTC of the demise of his client:

Undersigned counsel begs the indulgence of this Honorable Court for not having immediately informed the Court of Oppositor's demise as required by the rules, his delayed notice being due to the fact that undersigned counsel is based in Cagayan de Oro City, and it takes time for him to receive [a] copy of the Certificate of Death of the Oppositor coupled with his very hectic work schedules;⁵

Almost a year later, on August 21, 2012, respondent filed a "*Substitution of Party Petitioner and Motion for Reconsideration*"⁶ in CA-G.R. SP No. 01290-MIN, offering an essentially the same excuse for the delayed notice to the CA of Peregrina's death:

x x x Undersigned counsel begs the indulgence of this Honorable Court for not having immediately informed the Court of Petitioner's demise as required by the rules, his delayed notice being due to the fact that the undersigned counsel is based in Cagayan de Oro City, while his client is based in Davao City and his client's heirs in Poblacion, Bien Unido, Bohol [and] it takes time for him to receive [a] copy of the Certificate of Death of the Petitioner coupled with his very hectic work schedules;⁷

Complainant, being the respondent in CA-G.R. SP No. 01290-MIN, then instituted this complaint for disbarment, docketed as CBD Case No 13-3872 before the Integrated Bar of the Philippines (IBP).⁸ Complainant charged respondent of violation of Section 16, Rule 3 of the 1997 Rules of Court, which requires a counsel to inform the court of the death of his client within 30 days from the date thereof. Complainant likewise accused respondent of committing falsehood, in violation of Rule 10.01 of the CPR.⁹ According to complainant, when respondent filed the Notice of Substitution in CA-G.R. SP No. 01290-MIN, he had long been aware of the death of his client.¹⁰

For his defense, respondent admitted the factual allegations in the complaint but denies committing falsehood in violation of Rule 10.01 of the CPR.¹¹ Respondent asserted that the justification he offered for the delayed notice of his client's death was the truth, and

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⁴ Id. at 7-9.
⁵ Id. at 7.
⁶ Id. at 14-19.
⁷ Id. at 14.
⁸ Id. at 2-5.
⁹ Id. at 3-4.
¹⁰ Id. at 3.
¹¹ Id. at 24-25.

that the lapse of time between the filing of the notices of death in SP No. 3420-94 and CA-G.R. SP No. 01290-MIN does not make his explanation a falsehood.¹²

Respondent admitted not having complied with the 30-day notice rule under Rule 3, Section 16 of the 1997 Rules of Court, but denied that it was done in bad faith, considering that the RTC and the CA did not impose any sanction upon him. He claimed that if there was any inaccuracy in his pleadings, the same is not material or substantial to warrant sanctions.¹³

Findings and Recommendation of the Integrated Bar of the Philippines (IBP)

In the IBP Report and Recommendation¹⁴ dated February 18, 2014, the Investigating Commissioner found that respondent was guilty of violation of Rule 3, Section 16 of the Rules of Court and Canon 10, Rules 10.01 and 10.03 of the CPR.¹⁵ The Investigating Commissioner cited the case of *Domingo v. Landicho*,¹⁶ where the Court similarly declared a counsel guilty of the same violations when his non-compliance with Rule 3, Section 16 of the Rules of Court was compounded by his misrepresentation before the CA that his client was well and alive.¹⁷ Taking its cue from *Domingo v. Landicho*, the Investigating Commissioner recommended that respondent be admonished and sternly warned that the repetition of the same or similar acts will be dealt with more severely.¹⁸

Thereafter, in Resolution No. XXI-2014-777¹⁹ dated October 11, 2014, the IBP-Board of Governors (BOG) adopted and approved the Report and Recommendation of the Investigating Commissioner with modification as to the penalty imposed, in view of a previous sanction meted upon respondent that aggravates his present offenses. Thus, the IBP-BOG recommended that respondent be suspended from practice of law for a period of one (1) year, *viz.*:

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¹² Id. at 25.

¹³ Id. at 26.

¹⁴ Id. at 93-98; penned by Commissioner Antonio Ray A. Ortiguera.

¹⁵ Id. at 97.

¹⁶ 558 Phil. 364 (2007).

¹⁷ Id. at 378.

¹⁸ *Rollo*, pp. 97-98.

¹⁹ Id. at 92.

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, with modification, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", and for not having complied with Rule 3, Section 16 of the Rules of Court in violation of Canon 10, Rule 10.01 and Rule 10.03 of the Code of Professional Responsibility aggravated by his previous sanction, Atty. Romero A. Boniel is hereby SUSPENDED from the practice of law for one (1) year.

Findings and Recommendation of the Office of the Bar Confidant (OBC):

On October 5, 2016, the Court issued a Resolution²⁰ resolving to refer the instant administrative case to the OBC for evaluation, report and recommendation.

Accordingly, the OBC issued a Report and Recommendation²¹ dated February 17, 2017, noting the recommendations of both the IBP Investigating Commissioner and the BOG. However, it recommended that the period of the penalty of suspension be increased to two (2) years, on account of: i) respondent's previous offense, and, ii) the latter's failure to move for the lifting of his prior suspension before resuming his law practice. In addition, the OBC recommended the imposition of a fine of ₱20,000.00,²² viz.:

WHEREFORE in view of the foregoing, it is respectfully recommended that ATTY. ROMERO A. BONIEL be SUSPENDED from the practice of law for TWO (2) YEARS for violation of Canon 10, Rule 10.01 and 10.03 and for having resumed his practice of law despite not having caused the lifting of his previous suspension in A.C. No. 4373; and that he be required to pay a FINE of Twenty Thousand Pesos (P20,000.00) for deliberately and knowingly practicing law while the previous suspension of the Court has not yet been lifted.

Respectfully submitted.²³

Ruling

After a careful review of the records, the Court adopts the findings and recommendations of the OBC, except the recommended period for the penalty of suspension, which we reduce from two (2) years to one (1) year.

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²⁰ Id. at 101.

²¹ Id. at 102-112.

²² Id. at 111.

²³ Id.

Section 16, Rule 3 of the 1997 Rules on Civil Procedure provides:

Section 16. *Death of Party; Duty of Counsel.* - Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with this duty shall be a ground for disciplinary action.

The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint a guardian *ad litem* for the minor heirs.

The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice.

If no legal representative is named by the counsel for the deceased party, or if the one so named shall fail to appear within the specified period, the court may order the opposing party, within a specified time, to procure the appointment of an executor or administrator for the estate of the deceased, and the latter shall immediately appear for and on behalf of the deceased. The court charges in procuring such appointment, if defrayed by the opposing party, may be recovered as costs.

The provision is clear that the failure of a counsel to comply with his duty to inform the court of the death of his client within 30 days thereafter, as well as to give the name and address of his legal representative or representatives, is a ground for disciplinary action. While the Court recognizes that in some instances, a counsel's non-compliance with the 30-day period may be excused, it is first incumbent upon him to establish the presence of sufficient justification for his delayed reporting.

In this case, respondent alleged the same reason for belatedly informing the RTC and the CA, on September 26, 2011 and August 21, 2012, respectively, of Peregrina's death—that he holds office in Cagayan de Oro City, and it took time for him to receive a copy of the Certificate of Death of his client [who died in Davao City on February 3, 2011]. The Court holds that while respondent's excuse may have sufficed to justify the first untimely filing of the notice of death with the RTC of Davao City on September 26, 2011 in SP No. 3420-94, the same reason fails to satisfactorily explain the delayed reporting he made to the CA in CA-G.R. SP No. 01290-MIN on August 21, 2012.

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The substantial lapse of time between the first and the second notices betrays an underlying negligence on his part, which he obviously attempted to dissimulate in order to avoid being sanctioned.

By his conduct, We find that he violated the following provisions of the CPR:

Canon 10 - A lawyer owes candor, fairness and good faith to the court;

Rule 10.01 - A lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead, or allow the Court to be misled by any artifice.

Rule 10.03 - A lawyer shall observe the rules of procedure and shall not misuse them to defeat the ends of justice.

In this regard, an admonition, or at most, a suspension from the practice of law for a period of one (1) month would typically suffice to penalize respondent for his conduct. However, as borne out by the records, respondent was previously found administratively liable in A.C. No. 4373 for trifling with the courts and the judicial processes by resorting to forum-shopping, for which he was meted the penalty of suspension from the practice of law for three (3) months, with a warning that a repetition of a similar misconduct will be dealt with more severely. Considering that his past offense, which falls under Canon 12 of the CPR, and his present infraction under Canon 10 of the same Code both constitute a violation of a lawyer's duty to the courts, the former verily aggravates the present offense.²⁴

To further aggravate his offense, the record is bereft of any indication that he has taken any step to cause the lifting of his suspension prior to resuming his law practice, pursuant to the guidelines laid down in the case of *Maniago v. Atty. De Dios*,²⁵ to wit:

IN LIGHT OF THE FOREGOING, it is hereby *RESOLVED* that the following guidelines be observed in the matter of the lifting of an order suspending a lawyer from the practice of law:

1) After a finding that respondent lawyer must be suspended from the practice of law, the Court shall render a decision imposing the penalty;

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²⁴ Id. at 111.

²⁵ 631 Phil. 139 (2010).

2) Unless the Court explicitly states that the decision is immediately executory upon receipt thereof, respondent has 15 days within which to file a motion for reconsideration thereof. The denial of said motion shall render the decision final and executory;

3) Upon the expiration of the period of suspension, respondent shall file a Sworn Statement with the Court, through the Office of the Bar Confidant, stating therein that he or she has desisted from the practice of law and has not appeared in any court during the period of his or her suspension;

4) Copies of the Sworn Statement shall be furnished to the Local Chapter of the IBP and to the Executive Judge of the courts where respondent has pending cases handled by him or her, and/or where he or she has appeared as counsel;

5) The Sworn Statement shall be considered as proof of respondent's compliance with the order of suspension;

6) Any finding or report contrary to the statements made by the lawyer under oath shall be a ground for the imposition of a more severe punishment, or disbarment, as may be warranted.²⁶

In view of the foregoing, We deem the penalty of suspension for a period of one (1) year from the practice of law to be commensurate with the extent of respondent's infractions and the attending aggravating circumstances.

WHEREFORE, premises considered, respondent Atty. Romero A. Boniel is hereby found **GUILTY** of violation of Section 16, Rule 3 of the 1997 Rules on Civil Procedure and Canon 10, Rules 10.01 and 10.03 of the Code of Professional Responsibility, aggravated by his previous sanction in A.C. No. 4373 and by the resumption of his law practice despite his failure to cause the lifting of the order of suspension against him. Thus, he is hereby **SUSPENDED** from the practice of law for a period of **One (1) year** and is ordered to **PAY** the **FINE** of **₱20,000.00**. He is likewise hereby **STERNLY WARNED** that the repetition of the same or similar violations will be dealt with even more severely.

Let copies of this Resolution be attached to the personal records of respondent as attorney, and be furnished to the Office of the Bar Confidant, the Integrated Bar of the Philippines, and the Office of the Court Administrator for proper dissemination to all courts throughout the country.


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²⁶ Id. at 147.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court
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by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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