

## THIRD DIVISION

[ A.C. No. 6166, October 02, 2009 ]

**MARIA EARL BEVERLY C. CENIZA, COMPLAINANT, VS. ATTY.  
VIVIAN G. RUBIA, RESPONDENT.**

### DECISION

**YNARES-SANTIAGO, J.:**

In a verified complaint<sup>[1]</sup> dated July 25, 2003 filed with the Office of the Bar Confidant, Maria Earl Beverly C. Ceniza charged Atty. Vivian G. Rubia with grave misconduct, gross ignorance of the law and falsification of public documents.

The facts of the case are as follows:

On May 3, 2002, complainant sought the legal services of the respondent in regard to the share of her mother-in-law in the estate of her husband Carlos Ceniza. As she had no money to pay for attorney's fees since her mother-in-law would arrive from the United States only in June 2002, respondent made her sign a promissory note for P32,000.00, which amount was lent by Domingo Natavio. After her mother-in-law arrived and paid the loan, respondent furnished them a copy of the complaint for partition and recovery of ownership/possession representing legitime but with no docket number on it. They kept on following up the progress of the complaint. However, three months lapsed before respondent informed them that it was already filed in court. It was then that they received a copy of the complaint with "Civil Case No. 4198" and a rubber stamped "RECEIVED" thereon. However, when complainant verified the status of the case with the Clerk of Court of the Regional Trial Court of Davao del Sur, she was informed that no case with said title and docket number was filed.<sup>[2]</sup>

Further, complainant alleged that respondent was guilty of gross ignorance of the law for intending to file the complaint in Davao del Sur when the properties to be recovered were located in Koronadal, South Cotabato and Malungon, Sarangani Province, in violation of the rule on venue that real actions shall be filed in the place where the property is situated. Complainant also alleged that respondent forged the signature of her husband, Carlito C. Ceniza, in the Affidavit of Loss attached to a petition for the issuance of a new owner's duplicate certificate of title filed with the Regional Trial Court (RTC) of Digos City, Branch 20, in Misc. Case No. 114-2202.<sup>[3]</sup>

In her comment, respondent assailed the personality of the complainant to institute the administrative complaint for disbarment as she was not a party to the action for partition and recovery of ownership/possession. As such, her allegations in the administrative complaint were all hearsay, self-serving and unsubstantiated. Further, the charge of forgery of the Affidavit of Loss was belied by the March 3, 2003 decision of the trial court, wherein Carlito C. Ceniza affirmed his statements in the said affidavit when he was called to testify.<sup>[4]</sup>

On February 2, 2004, the Court resolved to refer the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

On April 29, 2004, respondent filed a Supplemental Comment explaining the rubber stamped "RECEIVED" on the complaint. According to her, when her staff Jan Kirt Lester Soledad was at the RTC Office of the Clerk of Court, she called him through cellular phone and directed him to stop the filing of the complaint as the same lacked certain attachments. However, one copy thereof was already stamped "RECEIVED" by the receiving court personnel, who also assigned a docket number. She kept the copies of the complaint, including the one with the stamp, to be filed later when the attachments are complete.

Meanwhile, on November 7, 2005, respondent filed a Manifestation with Urgent Motion praying that the administrative complaint be likewise dismissed in view of the dismissal of the criminal case due to complainant's apparent lack of interest to prosecute.

On January 19, 2007, the IBP Investigating Commissioner recommended that respondent be found guilty of falsification of public document and be meted the penalty of suspension from the practice of law for a period of three years. The report reads in part, as follows:

A proceeding for suspension or disbarment is not in any sense a civil action, where the complainant is a plaintiff and the respondent lawyer is a defendant. It involved no private interest. The complainant or person who called the attention of the court to the attorney's misconduct is in no sense a party and has generally no interest in its outcome except as all good citizens may have in the proper administration of justice. It affords no redress for private grievance. (Tejan v. Cusi, 57 SCRA 154)

Prescinding from the aforequoted ruling, it is therefore irrelevant and immaterial if herein complainant is not a party to the subject civil complaint prepared by the respondent. A case of suspension or disbarment may proceed regardless of interest or lack of interest of the complainant. What matters is whether on the basis of the facts borne out by the record, the charge has been proven.

On the payment of the acceptance fee in the amount of P32,000.00, respondent's contention that she acted as guarantor of Carlos Ceniza, complainant's husband, when he borrowed money from a money lender, Domingo Natavio, the amount representing the acceptance, does not inspire belief. The promissory note dated May 3, 2002, appended as Annex "A" of the complaint-affidavit eloquently shows that consistent with the complainant's allegation, she was made to borrow said amount to be paid as respondent's acceptance fee. It bears stress that the date of the promissory note is the same date when respondent's services were engaged leading to the preparation of the subject civil complaint. Complainant's allegation is further enhanced by the fact that such promissory note was even notarized by the respondent.

On the alleged filing of the subject civil complaint, it is undisputed that the same was not filed before the Office of the Clerk of Court, RTC Davao Del Sur, as evidenced by a Certification from the said office appended as Annex "A" of complainant's Manifestation dated October 14, 2005. Thus, the claim of complainant that respondent falsified or caused it to falsify the stamp marked received dated May 10, 2002 including the case number "4198", finds factual and legal bases.

It bears stress that a copy of the subject civil complaint was obtained by complainant from the respondent herself who tried to impress upon the former that contrary to her suspicion, the subject civil complaint was already filed in court. However, inquiry made by the complainant shows otherwise.

Respondent's contention that after one copy of the complaint was already stamped by court personnel in preparation for receiving the same and entering in the court's docket, she caused it to be withdrawn after realizing that the same lacked certain attachments, is bereft of merit.

In the first place, respondent miserably failed to mention these lacking attachments that allegedly caused the withdrawal of the complaint. Secondly, and assuming arguendo that the withdrawal was due to lacking attachments, how come the same was not filed in the next office day complete with attachments. And lastly, the Certification of the Clerk of Court clearly states that Civil Case No. 4188 is not the case of Mercedes Callejo vda. De Ceniza, et al. vs. Charlotte Ceniza, et al.

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The fact that the City Prosecutor's Office of Digos, upon motion for reconsideration of the respondent, dismissed a similar complaint filed by herein complainant will not in anyway affect the above captioned administrative complaint.

The pendency of a criminal action against the respondent, from the facts of which the disciplinary proceeding is predicated, does not pose prejudicial question to the resolution of the issues in the disbarment case. (Calo vs. Degano, 20 SCRA 447) His conviction is not necessary to hold the lawyer administratively liable because the two proceedings and their objectives are different and it is not sound public policy to await the final resolution of a criminal case before the court act on a complaint against a lawyer as it may emasculate the disciplinary power of the court. (In re Brillantes, 76 SCRA 1) Nor is his acquittal, by this fact alone, a bar to an administrative complaint against him. (Piatt vs. Abordo, 58 Phil. 350).

The other allegations in the complaint about ignorance of the law are found to be without basis.

### **RECOMMENDATION**