

SECOND DIVISION

[A.C. No. 12006, June 29, 2020]

**MATTHEW CONSTANCIO M. SANTAMARIA, COMPLAINANT, VS.
ATTY. RAUL O. TOLENTINO, RESPONDENT.**

R E S O L U T I O N

DELOS SANTOS, J.:

Before Us is an administrative complaint for disbarment filed by Matthew Constancio O. Santamaria (complainant) against Atty. Raul O. Tolentino (respondent) for violation of the Lawyer's Oath and the Code of Professional Responsibility (CPR).

Complainant gives the following account of the facts that spawned the filing of the present administrative complaint.

In his Verified Complaint^[1] dated December 21, 2015, complainant alleged that respondent violated his lawyer's oath and the CPR when he drafted and notarized a document known as Irrevocable General Power of Attorney (IGPA)^[2] which made possible the conveyance of ten (10) real properties owned by his late mother, Miriam Maglana (Miriam) to his father, Manuel Santamaria (Manuel). When Manuel filed a criminal complaint for adultery against Miriam, respondent appeared as her counsel and represented the latter in the Regional Trial Court (RTC) where the case remained unresolved for an unreasonable length of time. When Miriam was already dying of cancer and in dire need of money, she wrote a letter to Supreme Court Administrator Christopher Lock thereby pleading for relief from the delay of the case.^[3] The RTC eventually rendered a Decision^[4] dated February 11, 2009, dismissing the case in favor of Miriam. Manuel elevated the adverse judgment to the Court of Appeals (CA).^[5] While the case was pending in the appellate court, Miriam died of cancer. Unfortunately, however, respondent, being her counsel of record, failed to inform the court of his client's death.^[6] Worse, he neglected to file an Appellee's Brief in violation of the lawyer's oath and the CPR.^[7]

Subsequently, respondent contacted Ivy Lois Lardizabal (Ivy), the sister of complainant, informing her that Manuel filed a motion for reconsideration to which complainant and his siblings should reply immediately and asked for P25,000.00 as payment thereof. But the heirs of Miriam informed him that they cannot however afford the said amount. Respondent was also informed by their stepfather to do what is appropriate to protect their interest with a promise for later payment.^[8]

In a letter^[9] dated March 2, 2012, complainant was surprised when respondent represented Manuel in conveying to complainant and his siblings the alleged 33-hectare farm at Bayabas, Toril, Davao City (Toril farm) which confirmed his suspicion that respondent was behind the proposed Memorandum of Agreement (MOA)^[10] dated March 3, 2009, wherein Manuel proposed to sell the same property to pay

respondent his legal fees. Furthermore, respondent showed interest in the Toril farm by asking complainant's counsel to put their position in writing.^[11]

After receiving the case files from his former lawyer last December 2015, complainant saw certain documents which contained information that led him to file an Addendum to the Verified Complaint Against Atty. Raul O. Tolentino, Roll No. 16154 filed on December 21, 2015.^[12] However, due to unfortunate circumstances, when complainant went to the Integrated Bar of the Philippines (IBP) Office in Pasig City to file the said Addendum, it was rejected by the receiving staff at the Commission on Bar Discipline (CBD). Hence, he sought recourse in the Office of the Bar Confidant (OBC).^[13]

The OBC, upon receiving the letter^[14] of complainant issued an Indorsement^[15] referring the case to Atty. Rosario T. Setias-Reyes, IBP National President, for appropriate action. Dissatisfied with the Report and Recommendation^[16] dated October 12, 2016 and the Resolution^[17] dated November 05, 2016 of the IBP, complainant prays that such be reconsidered or set aside.

In his defense,^[18] respondent denies having committed the unethical and immoral acts which complainant claims he did. He alleged that Miriam and Manuel were married on April 3, 1966 and out of their marriage, Manuel John Santamaria, Mark Santamaria, and Michael Luke Santamaria were born. Sometime in 1981 and 1982, the spouses had frequent quarrels over an alleged romantic relation of Miriam with Ignacio Almonte, Jr. (Ignacio) who was staying as boarder, which eventually resulted to a separation *de facto* between the spouses. Out of Miriam and Ignacio's amorous relationship, Ivy was born. This prompted Manuel to file a criminal case for adultery against them.^[19] Miriam sought the legal assistance of respondent and after a thorough discussion with her parents, a decision was arrived at to have the case settled, considering that her parents are well known and well respected in Davao City.^[20]

Respondent was requested to discuss the settlement with Atty. Dela Victoria and afterwards, Manuel agreed to the settlement provided that certain properties are ceded to him, especially the properties at Bato and Toril, Davao City which he and his parents had redeemed from the bank after Miriam failed to pay the loan. Miriam agreed that ten properties will be ceded to Manuel to sell, possess, and administer as the same could not be transferred to him personally, he being an American citizen.^[21]

Prior to October 24, 1989, the parties met in the office of Atty. Dela Victoria where it was agreed that the said lawyer shall draft the power of attorney, while respondent shall prepare the Affidavit of Desistance.^[22] Subsequently, the parties met again, this time, in the office of respondent for the signing of the documents but Miriam and respondent objected to the word "irrevocable." However, Atty. Dela Victoria explained that it was to guarantee that Miriam will not later on revoke the power of attorney. Thus, to put an end to the issue of the word "irrevocable," Miriam agreed to such proposal as it was the desire of her children to settle the criminal case between her and Manuel as evidenced by the Transcript of Stenographic Notes^[23] in Civil Case No. 26,852-98. This also finds support in complainant's July 26, 2000

letter^[24] to his mother Miriam. Miriam signed the IGPA with the name of respondent stamped as notary public. After the execution and notarization of the said document, the parties then proceeded to the City Prosecutor's Office where Manuel signed an Affidavit of Desistance.^[25] The City Prosecutor's Office later filed a Motion to Dismiss in court and as a consequence thereof, an Order of dismissal was issued.^[26]

Respondent likewise argued that contrary to complainant's allegation, it was Atty. Dela Victoria who drafted the IGPA. He pointed out that Miriam was not totally deprived of her paraphernal properties because she had eighteen (18) properties left after the settlement. Complainant made it appear that he was not aware of the IGPA and that his mother was destitute when it was him who wrote a letter to his mother where he mentioned the IGPA and accused his mother of maintaining a lavish lifestyle.^[27]

Respondent argues that there is no truth to the allegation that he employed delaying tactics in the handling of the case of Miriam since the delay was caused by the absence of a regular judge in the sala where it was raffled. Consequently, the hearings were done only by a succession of acting judges assigned to hear it but could only report for work two (2) days in a week. He even drafted a letter addressed to the Office of the Court Administrator where Miriam pleaded for a speedy disposition of the case.^[28]

He also denies the allegation that he was not able to inform the Court of Appeals of Miriam's death since it was complainant who refused to provide him a copy of his client's death certificate, the full names and addresses of her heirs, and calls to Bernie Lardizabal (Lardizabal), Miriam's then common-law husband, were ignored. Since the heirs of Miriam are non-cooperative with him, he could not file a withdrawal of appearance in the case nor could he submit an appellee's brief. That contrary to complainant's baseless allegation, respondent contacted Ivy and asked for P15,000.00 only which the heirs of Miriam cannot provide.^[29]

Finally, respondent was also not aware of the MOA until he received a formal copy of the complaint where it was attached. The MOA appears to have been prepared after the consultation that transpired between Manuel and his children. Respondent is not interested in the Toril farm because he has about 46 hectares of his own contrary to the complainant's allegation.^[30]

Report and Recommendation of the IBP

In a Report and Recommendation^[31] dated October 12, 2016, Investigating Commissioner Juan Orendain P. Buted (Commissioner Buted) stated that he failed to see how complainant strongly believes that respondent is at fault as it was evident in complainant's July 26, 2000 letter^[32] to his mother that the IGPA gave Manuel the authority to administer and sell the 10 properties and that it was executed by Miriam as part of their settlement in the criminal complaint for adultery. Even assuming that it was respondent who prepared the IGPA, there is no proof as to the vitiation of Miriam's consent in signing the document. No concrete and convincing evidence was presented to support the allegation of conspiracy between respondent and Manuel as pointed out in the report of the Investigating Commissioner.

The CBD likewise finds that the delay in the resolution of the case was caused by the long absence of the presiding judge. Respondent has also sufficiently explained his side as to his inability to notify the CA of his client's death. To support this claim, he submitted an Affidavit^[33] of a certain Evelyn C. Demoni stating that respondent had exerted efforts through her to obtain a copy of Miriam's death certificate and the names and addresses of all the heirs.

Commissioner Buted therefore recommends that the complaint be dismissed as there was no showing of malice, ill-will, irregularity or any misconduct on the part of respondent and that an attorney enjoys the legal presumption of innocence and as an officer of the court.

Complainant moved for a reconsideration but the same was denied by a resolution of the IBP Board of Governors.^[34]

The Court's Ruling

This Court resolves to adopt the IBP findings with modification.

Disbarment is the most severe form of disciplinary sanction given to a lawyer. It is with high regard that this Honorable Court has repeatedly held in various cases that contrary to the penalty that complainant is seeking to be imposed against respondent, the power to disbar or suspend ought always to be exercised on the preservative and not on the vindictive principle, with great caution and only for the most weighty reasons.^[35] It should only be imposed in clear cases of misconduct affecting the standing and moral character of the lawyer as an officer of the court and a member of the Bar.^[36] Hence, this Court has arrived at the following conclusions.

No less than the Honorable CA took notice in its Resolution^[37] dated September 29, 2011 in the case of *Miriam Maglana vs. Manuel Santamaria* (CA-G.R. CV No. 02279-MIN) of the fact that respondent failed to notify the said Court of the death of his client and along with this, said Court also took notice of the failure of respondent to file an Appellee's Brief for his client. Nowhere in respondent's defense did he deny the said finding of the Court of Appeals. His only proof to support his defense was a mere affidavit of a certain Evelyn Demoni^[38] who purportedly claimed that respondent exerted efforts to get a copy of the death certificate of Miriam. At the outset, it must be stressed that "under the rules, it is the duty of the attorney for the deceased defendant to inform the court of his client's death and to furnish the court with the names and residences of the executor, administrator, or legal representative of the deceased."^[39] Sections 16 and 17, Rule 3 of the Rules of Court provide:

Sec. 16. *Duty of attorney upon death, incapacity, or incompetency of party.* - Whenever a party to a pending case dies, becomes incapacitated or incompetent, it shall be the duty of his attorney to inform the court promptly of such death, incapacity or incompetency, and to give the name and residence of his executor, administrator, guardian or other legal representative.