

SECOND DIVISION

[A.C. No. 10890, July 01, 2020]

**LETECIA G. SIAO, COMPLAINANT, VS. ATTY. BAYANI S. ATUP,
RESPONDENT.**

R E S O L U T I O N

INTING, J.:

This administrative case is rooted on the Complaint^[1] dated July 18, 2015 filed by Letecia G. Siao (Letecia) against Atty. Bayani S. Atup (Atty. Atup) before the Court for alleged violations of the Lawyer 's Oath and Section 16, Rule 3 of the Rules of Court.

In her Complaint, Letecia alleged that Atty. Atup had appended a falsified Special Power of Attorney (SPA) purportedly executed in 1999 by the latter's client, Gabriel Yap, Sr. (Gabriel), to the Motion for Reconsideration elated November 15, 2013 that he filed before the Court of Appeals (CA) in the case of "*Cebu South Memorial Garden, Gabriel Yap, Sr., et al. v. Letecia Siao, et al.*," docketed as CA-G.R. CV No. 02037.^[2] Letecia also asserted that Atty. Atup had failed to formally inform the CA that Gabriel had already passed away within 30 days from such fact of death, in violation of Section 16, Rule 3 of the Rules of Court.^[3]

In his defense, Atty. Atup argued that Letecia had failed to substantiate her allegation that the signature of Gabriel appearing on the SPA had been forged. He explained that the variation in Gabriel's signatures as appearing on a contract he signed in 1997 and on the SPA was not sufficient basis to conclude that the SPA was a forgery. Atty. Atup also pointed out that the SPA was a notarized document which enjoyed the presumption of regularity and validity.^[4] While Atty. Atup admitted that there was a delay in informing the CA of Gabriel's fact of death, he claimed that such delay did not prejudice Letecia in any way that would warrant a disciplinary sanction against him.^[5]

The Report and Recommendation of the Investigating Commissioner

In his Report and Recommendation^[6] dated March 5, 2018, Investigating Commissioner Jose Villanueva Cabrera (Investigating Commissioner) recommended that Atty. Atup be suspended from the practice of law for a period of one year^[7] for having deliberately violated Section 16, Rule 3 of the Rules of Court,^[8] viz.:

Based on the foregoing motion for reconsideration, the Respondent is fully aware that his client, Gabriel Yap, Sr. was already dead, having died on May 31, 2013. Despite his knowledge of the fact of death, Respondent still representation in the title of the pleading, the first paragraph of his

motion that he is representing a client who was already dead. Respondent even indicated in the signature portion of the pleading that he is appearing as counsel for Gabriel Yap, Sr., a party who was already dead. x x x^[9]

Nevertheless, the Investigating Commissioner found no factual and legal bases to hold Atty. Atup liable for malpractice and gross misconduct for the alleged falsification of the subject SPA, given that: (a) the SPA dated March 9, 1999 was a public document that carried with it the presumption of regularity and validity; (b) the mere difference in the signatures of Gabriel appearing on the SPA and other documents did not prove that the SPA was a forgery; and (c) the Integrated Bar of the Philippines (IBP) – Commission on Bar Discipline was not the proper forum to investigate and resolve Letecia's allegation that Gabriel's signature on the SPA had been falsified by Atty. Atup. Thus, the Investigating Commissioner recommended the dismissal of these charges against Atty. Atup.^[10]

The Resolutions of the IBP Board of Governors

In the Notice of Resolution^[11] dated June 29, 2018, the IBP Board of Governors resolved to adopt the findings of fact and recommendation of the Investigating Commissioner to impose against Atty. Atup the penalty of suspension from the practice of law for a period of one year.^[12]

However, the IBP Board of Governors later reconsidered its ruling and reduced Atty. Atup's period of suspension from one year to one month, in the absence of bad faith and based on the guidelines, per the Notice of Resolution^[13] dated May 28, 2019.

The Court's Ruling

After a careful examination of the records, the Court concurs with the findings and recommendations of the IBP Board of Governors.

Section 16, Rule 3 of the Rules of Court provides:

SEC. 16. Death of a 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 duty of counsel under this provision is two-fold: *first*, the counsel must inform the court within 30 days after the death of his client of such fact of death; and *second*, to give the court the names and addresses of the deceased litigant's legal representative or representatives. This is the only representation that a counsel can undertake after his client's death as the fact of death essentially terminates the lawyer-client relationship that they had with each other.^[14]

In this case, it is undisputed that Atty. Atup filed a Motion for Reconsideration^[15] in behalf of his deceased client before the CA in the case of *Cebu South Memorial Garden, et al. v. Letecia Siao, et al.*, docketed as CA-G.R. CV No. 02037, in which he informally notified the CA of his client's death as quoted below:

Considering, that Gabriel Yap, Sr. has already died as evidenced by his death certificate (Annex C), all interest of the late Gabriel Yap, Sr. by operation of law is conveyed to his heirs by right of succession, which in this case are Gilbert Yap and Gabriel Yap, Jr.

Being the heir and successors-in-interest of the late Gabriel Yap, Sr., the authority put in question is put to rest as the right to prosecute the claim of plaintiff Gabriel Yap, Sr. is now a right of Gilbert Yap.^[16]

The Court agrees with the IBP that Atty. Atup continued to represent Gabriel by filing the motion before the CA despite full knowledge of the latter's death on May 31, 2013, in direct violation of Section 16, Rule 3 of the Rules of Court. Evidently, Atty. Atup had failed to properly notify the CA of Gabriel's death within the specified period and to give the CA the names and addresses of Gabriel's legal representatives. Although it is true that Atty. Atup stated in the motion that Gabriel was survived by his heirs, Gilbert Yap and Gabriel Yap, Jr., there was no mention of Gabriel's widow, Mrs. Basilia Yap, or whether an administrator or executor of Gabriel's estate had already been appointed who could be substituted in the case.

At this juncture, the Court emphasizes that the substitution of a deceased litigant is not automatic as the legal representative or representatives identified by the counsel are required to first appear before the court, which, in turn, will determine who may be allowed to be substituted for the deceased party. To illustrate, in the