

EN BANC

[A.C. No. 5987, August 28, 2019]

VIDAYLIN YAMON-LEACH, COMPLAINANT, VS. ATTY. ARTURO B. ASTORGA, RESPONDENT.

D E C I S I O N

PER CURIAM:

Before the Court is a complaint for disbarment filed by herein complainant Vidaylin Yamon-Leach against herein respondent Atty. Arturo B. Astorga on grounds of deceit, malpractice, grossly immoral conduct and gross violation of his Oath of Office and the Code of Professional Responsibility.

Complainant alleges as follows:

x x x x

1. I know Atty. Arturo Astorga not only because he is a prominent legal practitioner, an incumbent Provincial Board Member of Leyte, but also because he is a distant relative and our family lawyer.

2. During the month of September 2001, Atty. Arturo B. Astorga urged me to buy the "beach-front" property of Ms. Villaflora Un in Baybay, Leyte. Although the price was P1.4 Million, he told me that it could be paid through installments.

3. Before I left for Las Vegas, Nevada, U.S.A., Atty. Astorga collected from me the amount of P110,000.00. He told me that he would allegedly give the money to Ms. Un so that the property will not be offered to other persons. I did not complain when Atty. Astorga did not give me a receipt because I trusted him being a distant relative and our family lawyer.

4. When I was in Las Vegas, Nevada, U.S.A., I sent the amount of P1,300,215.00 to Atty. Astorga intended to pay for the remaining balance plus cost. A photocopy of the "Receipt For Money Remittance To PNB" (O.R. No. LV-067776 dated September 19, 2001) is hereto attached as Annex "A."

5. In the month of December 2001, I returned to the Philippines because my father died. When I visited Atty. Astorga, he told me that he has already paid Ms. Un and that he was allegedly working for the transfer of the title of the land to my name. I reminded him to give me a copy of the deed of sale and he promised to do so.

6. In the latter part of December 2001, Atty. Astorga handed to me papers entitled "Deed of Absolute Sale of Portions of Registered Land"

and requested me to sign below the word "Conforme," which I did. After signing and while reading the document, I noticed some strange features in the document, namely: it was undated; the sellers were a certain "Ariston Chaperon and Ursula Gumba" (not Villaflora Un); it did not contain a description of the boundaries of the land subject of the sale; and the number of the respective tax certificates of the sellers were not indicated. A photocopy of the said Deed is hereto attached as Annex "B."

7. When I raised these matters with him, Atty. Astorga assured me that everything was alright as, according to him, he would just make the necessary corrections later. Before we parted, Atty. Astorga reminded me that additional money was needed for his attorney's fees, for processing as well as for taxes, fees and charges.

8. He gave a me a Tickler and a Statement of Account stating the expenses, his attorney's fees, some legal advi[c]e and opinion and some other requests. A copy of said Tickler and Statement of Account [are] attached as Annexes "C" to "C-3." Pursuant to the Tickler and Statement of Account, I sent the amount of P204,000.00 (or US\$4,000.00) to Atty. Astorga on January 9, 2002. A photocopy of the "Receipt for Money Remittance To PNB" (O.R. No. LV-079933) is attached as Annex "D." Then on January 23, 2002, I sent another amount of P205,436.00 (or US\$4,060.00) to Atty. Astorga. A photocopy of the "Receipt for Money Remittance To PNB" (O.R. No. LV-080645) is attached as Annex "E."

9. A "Certification" issued by the PNB Remittance Centers Inc. showing that said amounts were indeed forwarded to the PNB Baybay Branch under Account No. 451-504-6718 in the name of Atty. Arturo B. Astorga, is attached as Annex "F."

10. My brother, Vicentico R. Yamon Jr., verified from Ms. Villaflora Un the transaction and he was shocked when Ms. Un told him that she did not receive a single centavo from Atty. Astorga. It turned out that the property subject of the undated "Deed [o]f Absolute Sale [o]f Portions of Registered Land" was neither the land of Ms. Un nor a beach-front property.

11. Further verification revealed that the sellers' signatures in the subject Deed of Sale prepared by Atty. Astorga were forgeries. Ariston Chaperon could not have signed the instrument of sale [in] December 2001 simply because he died eight (8) years earlier on June 14, 1994 while Ursula Gumba followed him to the grave on the following year. A Certification to this effect issued by the Local Civil Registry of Baybay, Leyte, is attached as Annex "G." (Please see also the Affidavit of Angela Piamonte [Annex "M"]).

12. I immediately called Atty. Astorga and informed him that I discovered what he had done. Atty. Astorga apologized and admitted that he has used the money. Thereafter, he made several promises to pay me back as follows: the end of the month of May 2002; last week of June 2002; middle part of July 2002 and last week of September 2002. Atty. Astorga did not fulfill his promises so I decided to go back home.

13. On or about the latter part of October 2002, I met Atty. Astorga at the house of my brother Vicentico R. Yamon, Jr. in Brgy. Paguite, Abuyog, Leyte. I confronted him as to why he bought another lot whose sellers were already dead. Atty. Astorga apologized saying: "Mao bitaw nay akong sayop, ngano naghimo ko adto." (That is my fault... why I did it...). Thereafter, we made an accounting and he accepted the amount of P1,819,651.00 as the total money I gave him.

14. Later on, Atty. Astorga showed me two sets of documents which he had already signed and asked me to sign in the space below the word "Conforme." In these documents entitled "Agreement" and "Deed of Real Estate Mortgage," Atty. Astorga promised to pay me back on installment the amount of P1,819,651.00 and to mortgage to me his alleged residential lots at Veterans Village, Quezon City. Photocopies of these documents are attached as Annexes "H" and "I," respectively.

15. When I refused to sign these documents, Atty. Astorga promised to make an initial payment of P1,000,000.00 on November 4, 2002. However, and as what happened to his previous promises, he requested for the extension of the period to November 8, 2002.

16. Finally, on November 7, 2002, I received a letter from Atty. Astorga informing me that he could not fulfill with his promise citing various excuses. A photocopy of his Letter is attached as Annex "J."

x x x.^[1]

On April 2, 2003, this Court issued a Resolution^[2] requiring respondent to file his comment to the above-mentioned complaint within ten (10) days from receipt of the said Resolution. Respondent, however, failed to do so.

On November 9, 2005, complainant filed her Motions to Consider Respondent's Comment Waived and To Submit Case for Resolution.^[3]

Subsequently, this Court, noting that respondent still has not filed his comment to the complaint, issued a Resolution^[4] dated February 8, 2006, requiring respondent to show cause why he should not be disciplinarily dealt with or held in contempt for such failure; and to comply with this Court's Resolution of April 2, 2003 requiring him to file his comment. Per Tracer^[5] sent to the Postmaster of Baybay, Leyte, respondent received the above Resolution on April 5, 2006. Nonetheless, despite receipt of the said Resolution, respondent still failed to file the required comment.

Thus, per Resolution^[6] dated July 22, 2009, this Court imposed upon respondent a fine of P1,000.00 and reiterated its directive for respondent to file his comment to the complaint.

On July 29, 2009, complainant, again, filed Motions to Consider Respondent's Comment Waived and To Submit Case for Resolution.^[7]

On July 14, 2011, respondent submitted his Compliance^[8] to this Court's July 22, 2009 Resolution by paying the fine of P1,000.00 imposed upon him. Respondent, however, did not file his comment and, instead, requested an extension of ten (10) days within which to file the said comment.

Per Resolution^[9] of this Court dated August 24, 2011, complainant's Motions were noted and respondent's request for extension of ten (10) days to file his comment was granted.

On October 17, 2011, complainant, again, filed Motions to Consider Respondent's Comment Waived and To Submit Case for Resolution.^[10]

In a Resolution^[11] dated February 29, 2012, this Court noted complainant's Motions and imposed upon respondent an increased fine of P2,000.00 for his continued failure to file the required comment. The Court, likewise, reiterated its order for respondent to file his Comment, but the latter still failed to comply.

On November 19, 2012, complainant reiterated his Motions to Consider Respondent's Comment Waived and To Submit Case for Resolution.^[12]

As of August 13, 2019, this Court has yet to receive respondent's comment to the complaint.

Thus, the Court deems it proper to consider respondent's right to file his comment to the complaint as waived and proceed with the resolution of this case on the basis of the evidence presented by the complainant.

At the outset, this Court would like to address respondent's callous disregard of the various orders and processes it issued which led to the unreasonable and inordinate delay in the resolution of the instant case. This Court has been very tolerant of respondent's failure to comply with its directives as evidenced by the numerous opportunities which were given to him to file his comment to the complaint. However, respondent's cavalier attitude in repeatedly ignoring the orders of this Court without any justifiable reason, much less explanation, only shows his utter disrespect to the judicial institution. What makes matters worse for respondent is the fact that he is not an ordinary litigant but is an officer of the court who is particularly called upon to obey court orders and processes. As an officer of the court, respondent is expected to know that a resolution of this Court is not a mere request but an order which should be complied with promptly and completely^[13] and not partially, inadequately or selectively.^[14] Moreover, as the courts' indispensable partner in the sacred task of administering justice, graver responsibility is imposed upon a lawyer, like herein respondent, than any other to uphold the integrity of the courts and to show respect to its processes. Thus, any act on his part which tends visibly to obstruct, pervert or impede and degrade the administration of justice constitutes professional misconduct calling for the exercise of disciplinary action against him.^[15]

In the instant case, respondent's failure to comply with the Court's several directives to file his comment to the complaint constitutes willful disobedience and gross misconduct.^[16] The Court defined gross misconduct as "any inexcusable, shameful,

flagrant, or unlawful conduct on the part of the person concerned in the administration of justice which is prejudicial to the rights of the parties or to the right determination of a cause."^[17] It is a "conduct that is generally motivated by a premeditated, obstinate, or intentional purpose."^[18] In previous cases,^[19] this Court held that a respondent-lawyer's failure to comply with the lawful orders of this Court constitutes gross misconduct and insubordination or disrespect which, alone, can merit the penalty of disbarment.

As mentioned above, respondent's willful disobedience of this Court's numerous orders has resulted in the extreme delay of the instant proceedings. Thus, he is guilty of violating Canon 12 of the Code of Professional Responsibility (*Code*), which provides that "[a] lawyer shall exert every effort and consider it his duty to assist in the speedy and efficient administration of justice." He also violated Rules 12.03 and 12.04, Canon 12 of the same Code, which state, respectively, that "[a] lawyer shall not, after obtaining extensions of time to file pleadings, memoranda or briefs, let the period lapse without submitting the same or offering an explanation for his failure to do so" and "[a] lawyer shall not unduly delay a case, impede the execution of a judgment or misuse court processes."

To stress, the practice of law is a privilege given to lawyers who meet the high standards of legal proficiency and morality, including honesty, integrity and fair dealing. They must perform their four-fold duty to society, the legal profession, the courts and their clients, in accordance with the values and norms of the legal profession as embodied in the Code. Falling short of this standard, the Court will not hesitate to discipline an erring lawyer by imposing an appropriate penalty based on the exercise of sound judicial discretion in consideration of the surrounding facts.^[20]

Thus, stated differently, judging from respondent's failure to file his comment after five (5) Resolutions issued by this Court, nothing can be concluded therefrom but that respondent's acts, or inaction for that matter, were deliberate and manipulating, which unreasonably delayed this Court's action on the case. These acts constitute conscious and total indifference to the lawful orders of this Court, which, not only works against his case as he is now deemed to have waived the filing of his comment, but more importantly is in itself a sufficient cause for suspension or disbarment pursuant to Section 27,^[21] Rule 138 of the Rules of Court.^[22]

As to the merit of complainant's allegations, it is evident from the documents presented that: respondent was the one who sought the complainant and encouraged her to invest in and buy what he represented as a "beach-front" property; respondent volunteered to act as complainant's representative in the supposed purchase of the alleged property as well as the processing of the documents necessary to transfer title to complainant; respondent not only received but even solicited and demanded substantial amounts from the complainant in four separate instances totaling P1,819,651.00, which he himself acknowledged to have received;^[23] he misrepresented that the said amount would cover, aside from the purchase price, expenses for the payment of various forms of taxes, processing fees and his professional fee;^[24] respondent misappropriated the money he received from complainant; respondent deceived complainant by making it appear that he bought the "beach-front" property when, in fact, he did not; he defrauded