

SECOND DIVISION

[A.C. No. 11616 [Formerly CBD Case No. 08-2141], August 23, 2017]

LITO V. BUENVIAJE, COMPLAINANT, VS. ATTY. MELCHOR G. MAGDAMO, RESPONDENT.

DECISION

PERALTA, J.:

Before us is an Administrative Complaint dated December 28, 2007 filed by Lito Buenviaje^[1] (*Buenviaje*) against respondent Atty. Melchor G. Magdamo (*Atty. Magdamo*), docketed as A.C. No. 11616 for violation of the Code of Professional Responsibility.

The antecedent facts are as follows:

In the instant Complaint dated December 28, 2007, Buenviaje alleged that he was married to the late Fe Gonzalo-Buenviaje as evidenced by NSO issued Marriage Contract Register No. 87-13503-A.^[2] Fe died on September 17, 2007.

Meanwhile, Atty. Magdamo was the counsel of Fe's sisters, Lydia and Florenia Gonzalo, who filed a criminal case for bigamy against Buenviaje. They claimed that Buenviaje was married to a certain Amalia Ventura in 1978, thus, making him guilty of bigamy.

In an attempt to protect the rights and interests of his clients in securing the monies of their sibling, deceased Fe Gonzalo, Atty. Magdamo sent a Notice of Death of Depositor^[3] dated October 11, 2007 to the Bank of the Philippine Islands (*BPI*)-Dagupan Branch where Buenviaje and Fe appeared to have a joint account. The pertinent portion of said Notice reads as follows:

"x x x x

FE SOLIS GONZALO was formerly an Overseas Filipina Worker (OFW) Nurse in Switzerland whose lifetime savings is now in an account in BPI-Dagupan. She came back to the Philippines to spend the last days of her life with her family in San Fabian, Pangasinan. Unfortunately, ***while she was terminally ill and while residing in Manila so as to be near Saint Luke's Hospital, a clever swindler by the name of LITO BUENVIAJE made it appear on spurious documents that he is the husband of Fe Gonzalo when in truth and in fact LITO BUENVIAJE is married to AMALIA VALERA.***

x x x x

Moreover, ever since 24 August 2007, ***LITO V. BUENVIAJE has been a fugitive from justice as he has been hiding from the criminal charge in People of the Philippines versus Lito Buenviaje y Visayana, case number 7H-103365***, pending in the City of Manila.

x x x x

Fe never had a husband or child in her entire life. x x x" (Emphasis ours)

Aggrieved, Buenviaje filed the instant administrative complaint against Atty. Magdamo for violation of Rule 1.01, Canon 7, Rule 7.03 and Rule 19.01 of the Code of Professional Responsibility. Buenviaje averred that in Atty. Magdamo's Notice of Death of Depositor dated October 11, 2007 sent to the BPI-Dagupan Branch, he untruthfully and maliciously quoted the following statements: (1) *"a clever swindler by the name of Lito Buenviaje made it appear on spurious document that he is the husband of Fe Gonzalo when in truth and in fact Lito Buenviaje is married to Amalia Valero"*, (2) *"since August 24, 2007, Lito V. Buenviaje has been a fugitive from justice as he has been hiding from the criminal charge in People of the Philippines versus Lito Buenviaje y Visayana, case number 7H-103365 pending in the City of Manila"*, and (3) *"Fe never had a husband or child in her entire life"* to his prejudice.

Buenviaje alleged that he discovered the Notice's existence sometime in December 2007 when he inquired about the remaining balance of his joint account with Fe. He lamented that he was shocked upon reading the letter and felt humiliated at the words written against him as the bank manager and the other bank personnel might have really thought that he was a swindler and a fugitive from justice.^[4]

Buenviaje denied Atty. Magdamo's allegation that Fe was never married as they were in fact married in a public civil rites in the presence of many relatives of Fe. As to his alleged marriage with a certain Amalia Valera, Buenviaje admitted that he had extramarital relationship with her and that they had two (2) sons. When they separated and he subsequently worked overseas, it did not stop him from fulfilling his responsibilities as a father to his sons. He was then advised to remit money to Amalia but he was told that he needed a marriage contract to be able to do so, thus, he asked someone to make a marriage contract for remittance purposes and that he was told that there would be no record of it. Buenviaje claimed that at that time, he really believed that no valid marriage took place between him and Amalia and that he was single up to the time he married Fe.

Buenviaje lamented that Atty. Magdamo employed dirty and dishonest means and tactics to ensure that BPI will prevent him from withdrawing money from the joint account that he has with his late wife. He averred that in referring to him as a "swindler", Atty. Magdamo succeeded in intimidating BPI-Dagupan into extrajudicially "freezing" the joint account and in not transacting with him.

Buenviaje also pointed out that Atty. Magdamo, in referring to him as a fugitive from justice, in effect, made BPI-Dagupan believe that a criminal complaint was already pending against him when in truth and in fact, the August 24, 2007 complaint for bigamy filed by Lydia and Florenia was still pending before the Office of the City Prosecutor of Manila at the time that they wrote and served the Notice to BPI-Dagupan.

Buenviaje further added that Atty. Magdamo even made threats to him as evidenced by his text messages to him, to wit: "*Sometime in the morning of 1 October 2007, I sent text messages to Lito's last known Subscriber Identity Module (SIM) number (+639062097612) requesting him to stop his merciless plunder and to voluntarily surrender to the rule of law.*"

Finally, Buenviaje questioned Atty. Magdamo's fitness to continue in the practice of law as he has displayed lack of ability to distinguish a fugitive from justice and a respondent in a criminal investigation; employed of dirty and unprofessional tactics of calling him a "swindler"; and by referring to his marriage contract with his wife as "spurious document". He, thus, prayed that considering Atty. Magdamo's actuations, he should be disbarred or suspended from the practice of law.

On January 9, 2008, the IBP-Commission on Bar Discipline (*IBP-CBD*) directed Atty. Magdamo to submit his answer on the complaint against him.^[5]

In its Report and Recommendation^[6] dated October 23, 2013, the IBP-CBD recommended that Atty. Magdamo be reprimanded for his unethical actuations.

However, the IBP-Board of Governors, in a Notice of Resolution No. XXI-2014-717 dated October 10, 2014, resolved to adopt and approve with modification the Report and Recommendation of the IBP-CBD, and instead suspend Atty. Magdamo from the practice of law for three (3) months.^[7]

Aggrieved, Atty. Magdamo moved for reconsideration. However, in Resolution No. XXII-2016-326^[8] dated May 28, 2016, the IBP-Board of Governors resolved to deny Atty. Magdamo's motion for reconsideration and affirm the latter's suspension.

We concur with the findings and recommendation of the IBP-Board of Governors.

The practice of law is a privilege given to lawyers who meet the high standards of legal proficiency and morality. Any violation of these standards exposes the lawyer to administrative liability. Canon 8 of the Code of Professional Responsibility provides:

CANON 8 — A lawyer shall conduct himself with courtesy, fairness and candor towards his professional colleagues, and shall avoid harassing tactics against the opposing counsel.

Rule 8.01. — A lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper.

In the instant case, Atty. Magdamo's actuations do not measure up to this Canon. The records show that he referred to Buenviaje as a "swindler". He made this imputation with pure malice for he had no evidence that Buenviaje is committing swindling activities. Even if he was suspicious of Buenviaje, he should have refrained from making such malicious reference or name-calling for he should know as a lawyer that the mere filing of a complaint against a person does not guarantee a finding of guilt, and that an accused is presumed innocent until proven guilty. Here, other than the criminal complaint for bigamy which Fe's siblings filed before the prosecutor's office, there were no other cases decided against Buenviaje.