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THIRD DIVISION

[A.C. No. 5914, March 11, 2015]

SPOUSES ROGELIO AMATORIO AND AIDA AMATORIO, COMPLAINANTS, VS. ATTY. FRANCISCO DY YAP AND ATTY. WHELMA F. SITON-YAP, RESPONDENTS.

RESOLUTION

REYES, J.:

This pertains to the complaint for disbarment filed by Spouses Rogelio Amatorio and Aida Amatorio (Aida) (complainants) against Attys. Francisco Dy Yap (Francisco) and Whelma Siton-Yap (respondents) for violating Rules 1.01, 7.03, 10.01, 10.02 and 10.03 of the Code of Professional Responsibility.

In their complaint, the complainants alleged that the respondents employed deceit to obtain favorable judgments, specifically by failing to inform the trial court that there was already an out-of-court settlement between them and maliciously manifesting that their counsel, Atty. Justo Paras (Atty. Paras) was suspended from the practice of law.[1]

The complainants asseverated that they are clients of Atty. Paras in two collection cases, particularly, Civil Case No. 2000-319 and Civil Case No. 2000-321, which were filed against them by the respondents. In Civil Case No. 2000-319, respondents sued the complainants to compel them to pay their indebtedness of P18,000.00, which was evidenced by a promissory note. After they filed their answer to the complaint, however, the respondents filed a motion to strike out the same and to declare them in default on the ground that the said pleading was prepared by a lawyer suspended from the practice of law and lacked proper verification. The motion was however denied.[2]

On the other hand, in Civil Case No. 2000-321, the respondents sued the complainants to collect the amount of P94,173.44. The answer filed by Atty. Paras was however stricken off the record for the reason that he was suspended from the practice of law at the time of its filing.[3]

Unable to find a lawyer to replace Atty. Paras, the complainants decided to seek an out-of-court settlement. On May 23, 2001, Aida went to the respondents' law office. She appealed for the respondents' consideration and asked that they be allowed to pay their obligations by way of installment. The parties agreed on the terms of payment and, on that same day, Aida tendered her first payment of P20,000.00, which was received and duly acknowledged by Francisco in a written document with the letterhead of Yap Law Office. When Aida asked the respondents if they should still attend the pre-trial conference scheduled on May 28, 2001 and June 18, 2001 in the civil cases filed against them, the latter told them they need not attend anymore as they will be moving for the dismissal of the cases. Relying on the respondents'

assurance, the complainants did not attend the scheduled hearings. Subsequently, they were surprised to receive copies of the decisions of the trial court in the two civil cases filed by the respondents, declaring them in default for non-appearance in the pre-trial conference and ordering them to pay the amount of their indebtedness and damages. The decision however did not mention the out-of-court settlement between the parties. Nonetheless, the complainants continued tendering installment payments to the respondents upon the latter's assurance that they will disregard the decision of the trial court since they already had an out-of-court settlement before the rendition of said judgment. They were surprised to learn, however, that the respondents filed a motion for the issuance of a writ of execution in Civil Case No. 2000-319 and were in fact issued said writ.[4] This prompted them to seek legal advice to address their predicament. They went to Atty. Jose V. Carriaga who, after learning of the factual milieu of their case, told them that they have a good ground to file a disbarment case against the respondents. He, however, declined to handle the case himself as he disclosed that his wife is a relative of the respondents. Instead, he referred the complainants to Atty. Paras, who had just resumed his practice of law after his suspension.[5]

As advised, the complainants went to Atty. Paras to engage his services as their counsel. Initially, Atty. Paras refused to handle their case as he revealed that the personal animosity between him and the respondents may invite unwelcome repercussions. Even then, the complainants insisted to retain his services as their counsel. Thus, Atty. Paras proceeded to file a disbarment case against the respondents with the Integrated Bar of the Philippines (IBP).[6]

As foretold by Atty. Paras, the complainants experienced unpleasant backlash which were allegedly instigated by the respondents who come from a very powerful and affluent clan. They received threats of physical harm and Aida's continued employment as a public school teacher was put in jeopardy. Also, suspicious-looking individuals were seen loitering around their house. When they refused to yield to the respondents' intimidation, the latter resorted to the filing of charges against them, to wit: (1) an administrative case against Aida for failure to pay the same debts subject of this case; and (2) a criminal case for perjury against the complainants. To alleviate their situation, they filed a Joint-Affidavit,[7] seeking the assistance of this Court to warn the respondents and to stop them from employing deplorable acts upon them.

In their Comment on the Complaint and Counter-Petition for Disbarment dated March 14, 2003, the respondents denied having resorted to deceitful means to obtain favorable judgments in Civil Case Nos. 2000-319 and 2000-321. They admitted that they agreed to an out-of-court settlement, through the intercession of Rosa Yap Paras, estranged wife of Atty. Paras, but denied that the complainants ever tendered any installment payment. They claimed that Atty. Paras merely employed cajolery in order to entice the complainants to file the instant case to retaliate against them. They asseverated that Atty. Paras resented the fact that the respondents served as counsel for his former wife, who previously filed the administrative case for immorality, abandonment of family, and falsification and use of falsified documents which resulted to his suspension.[8]

On their counter-petition for disbarment, the respondents asserted that Atty. Paras clearly defied the authority of this Court when he represented the complainants and

filed an answer on their behalf during the period of his suspension from the practice of law. They alleged that he appeared in several cases and filed numerous pleadings despite his suspension.[9]

After the parties submitted their respective position papers, the Investigating Commissioner of the IBP-Commission on Bar Discipline issued a Report and Recommendation[10] dated June 23, 2005, which pertinently states as follows:

> There is substantial evidence that Respondent Francisco Yap ha[s] deliberately neglected, at the very least, offered and/or pleaded inaccurate allegations/testimonies to purposely mislead or confuse the civil courts in Dumaguete City. Francisco Yap failed to controvert the existence and the authenticity of the Acknowledgment Receipt dated May 21, 2001 which bore his signature and written in a "Yap Law Office" letterhead. Such documentary evidence supports the theory of the Complainants that there was indeed an out-of-court settlement prior to the pre-trial hearings and that they were most likely assured that these cases would be dismissed. Their absence during the pre-trial hearings evidently resulted to decisions adverse to them. Moreover, the Motions for the Writ of Execution did not fail to mention the existence of partial payments and the prior agreement which, if disclosed, would have led the court not to issue such writs. Since Respondent Francisco Yap's signature appear in all the Acknowledgement Receipts and in all Motions filed in the civil courts, he alone should be penalized. On the other hand, Respondent Whelma Siton Yap should not be penalized in the absence of any evidence of her participation in such conduct. x x x.
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> All told, this Commissioner recommends that only Respondent Francisco Yap should be suspended from the practice of law for six (6) months. At the same time, the Counter Petition for Disbarment filed by herein Respondents against Atty. Justo Paras, which appears to be VERY meritorious, be given due course in another proceeding with utmost dispatch.[11]

Upon review of the report and recommendation of the Investigating Commissioner, the IBP Board of Governors issued Resolution No. XVII-2005-159[12] dated December 17, 2005, disposing thus:

> RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, **with modification**, the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex "A", and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and for deliberately neglecting, offering inaccurate allegations to purposely mislead or confuse the courts, Atty. Francisco D. Yap is hereby **SUSPENDED** from the practice of law for three (3) months. Atty. Whelma F. Siton-Yap is exonerated in the absence of any evidence of her participation in such conduct; however Respondents are **Warned** for indirectly misleading the Commission.[13]

On March 27, 2006, the respondents filed a Motion for Reconsideration/Petition for Review.[14]

On August 9, 2007, the complainants filed a Manifestation,[15] terminating the services of Atty. Paras and/or Paras-Enojo and Associates as their counsel for the reason that they can no longer afford the services of a private counsel.

Surprisingly, on the same day, the complainants executed a Judicial Affidavit,[16] disclaiming knowledge and participation in the preparation of the complaint and the pleadings filed on their behalf by Atty. Paras in connection with the disbarment case against the respondents. They claimed that they merely signed the pleadings but the contents thereof were not explained to them in a dialect which they understood. They likewise expressed lack of intention to file a disbarment case against the respondents and that, on the contrary, they were very much willing to settle and pay their indebtedness to them. Further, they asserted that it was not the respondents, but Atty. Paras who instructed them not to attend the pre-trial conference of the cases which eventually resulted to a judgment by default against them. They claimed that Atty. Paras told them that he will be the one to attend the pre-trial conference to settle matters with the respondents and the court but he did not show up on the scheduled date. They also asseverated that most of the statements contained in the complaint for disbarment were false and that they wished to withdraw the said complaint.

On May 14, 2011, the IBP Board of Governors issued Resolution No. XIX-2011-172, [17] which reads:

> RESOLVED to DENY Respondent's Motion for Reconsideration there being no cogent reason to reverse the findings of the Commission and it being a mere reiteration of the matters which had already been threshed out and taken into consideration. Thus, Resolution No. XVII-2005-159 dated 17 December 2005 is hereby **AFFIRMED**.[18]

On August 18, 2011, the respondents filed a motion for reconsideration, claiming that the admission of the complainants in the Judicial Affidavit dated August 9, 2007 proved that the disbarment case filed against them was just fabricated by Atty. Paras. They pointed out the complainants' statement that they were just made to sign the complaint for disbarment by Atty. Paras to retaliate against them for having filed a case against him for falsification of documents which sent him to prison for some time.

On August 18, 2011, the complainants sent a letter[19] to the IBP, expressing disappointment over the fact that the IBP Board of Governors did not dismiss the disbarment case against Francisco. The letter pertinently stated:

> We are very concerned and saddened by the fact that the disbarment case against ATTY. FRANCISCO DY YAP was **NOT DISMISSED. The reason is that we have submitted our JUDICIAL AFFIDAVIT relating the facts and circumstances wherein the said disbarment complaint was prepared by our former legal counsel, ATTY. JUSTO J. PARAS consisting of fabrications and not on facts. It was upon the machination and instigation of ATTY. JUSTO PARAS, that the simple collection case of P94,000.00 more or less, became a multifaceted case in several forums**.[20] (Emphasis in the original)