

## **FIRST DIVISION**

**[ A.C. No. 9906, July 29, 2013 ]**

**ATTY. LESTER R. NUIQUE, COMPLAINANT, VS. ATTY. EDUARDO SEDILLO, RESPONDENT.**

### **RESOLUTION**

**REYES, J.:**

The Court resolves the Complaint<sup>[1]</sup> for disbarment filed by Atty. Lester R. Nuique (complainant) with the Commission on Bar Discipline (Commission) of the Integrated Bar of the Philippines (IBP) against Atty. Eduardo Sedillo (respondent) who is charged with: ( 1) violating the prohibition on representing conflicting interests; (2) using abusive language against and disrespecting the court; and (3) spreading rumors against a colleague in the legal profession.

### **Factual Antecedents**

The complainant alleged that, sometime in 1992, the respondent became the lawyer of Kiyoshi Kimura (Kiyoshi), a Japanese citizen, and his wife Estrelieta Patrimonio-Kimura (Estrelieta) in a case for collection/recovery of overpayment against Carlos Amasula, Jr. (Amasula).<sup>[2]</sup> Since the spouses Kimura had to leave the country, the case was prosecuted by their representative Manuel Patrimonio (Manuel), Estrelieta's brother. The spouses Kimura obtained a favorable decision in the trial court, but the case was still on appeal with this Court at the time when the instant complaint was filed. The respondent remained the counsel of record of the spouses Kimura until July 2007 when Kiyoshi terminated his services.

Kiyoshi, during the course of his marriage to Estrelieta, purchased several real properties in Dumaguete City, some of which were registered under the name of Estrelieta and Manuel. Sometime in September 2006, Kiyoshi and Estrelieta had a falling out. Apparently, Estrelieta and Manuel falsified Kiyoshi's signature to make it appear that he loaned P1,500,000.00 from the Development Bank of the Philippines and, as security for the said loan, surreptitiously mortgaged a parcel of land he owned.<sup>[3]</sup>

Sometime in November 2006, Kiyoshi engaged the services of the complainant. Kiyoshi, acting through his representative Danilo Estocoming (Danilo) and Kazuhiro Sampie (Kazuhiro), filed a complaint against Estrelieta and Manuel for falsification.

<sup>[4]</sup> The respondent appeared as counsel of Estrelieta and Manuel.

On February 22, 2007, a civil action for accounting, sum of money and attachment was filed by Kimura Business Concepts, Inc., an assignee of Kiyoshi, in the Regional Trial Court (RTC) of Dumaguete City, Branch 44, against Estrelieta and Manuel. The respondent likewise entered his appearance as counsel for Estrelieta and Manuel in

the said case.<sup>[5]</sup> Further, sometime in February 2007, Kiyoshi intervened in Civil Case No. 13866, entitled *Nelson Patrimonio v. Development Bank of the Philippines*, then pending before the RTC. The respondent opposed Kiyoshi's motion for intervention in Civil Case No. 13866.

The respondent likewise assisted Estrelieta in instituting a *habeas corpus* case against Danilo and Kazuhiro, alleging that they were detaining Kiyoshi against his will. The *habeas corpus* case, however, was dismissed after Kiyoshi appeared in court and testified that he was not detained by Danilo and Kazuhiro. The complainant averred that the respondent disrespected the court when, in the motion for reconsideration<sup>[6]</sup> which he prepared, he stated that he "would have taken the resolution with a grain of salt."<sup>[7]</sup>

The complainant further alleged that, after the *habeas corpus* case was dismissed, the respondent had spread rumors against the complainant; that the complainant supposedly detained Kiyoshi and provided him with women.

In its Order<sup>[8]</sup> dated February 15, 2008, the Commission directed the respondent to file his answer to the Complaint. In his Answer with Counterclaim,<sup>[9]</sup> the respondent denied that he was guilty of representing conflicting interests, asserting that it was Manuel who sought his legal assistance and not Kiyoshi. He explained that the civil case against Amasula was actively handled and personally pursued by Manuel, albeit in representation of the spouses Kimura. He stressed that there has been no personal and active intervention by Kiyoshi or of Estrelieta in any of the stages of the case. The respondent claims that, for all intents and purposes, his client is Manuel and the spouses Kimura were merely "litigation- beneficiaries-in-waiting." Further, with respect to the falsification case against Estrelieta and Manuel, the respondent claims that the same was instituted by Danilo and Kazuhiro and not Kiyoshi.

As to the charge of disrespect to the court, the respondent claims that the phrase "with a grain of salt" is but a common phraseology that is neither offensive nor disrespectful. The respondent further denied having spread rumors to malign the complainant.

On May 2, 2008, the Commission set the case for mandatory conference on May 27, 2008.<sup>[10]</sup> Only the respondent appeared during the scheduled mandatory conference.<sup>[11]</sup>

On December 2, 2008, the complainant manifested to the Commission that he is no longer interested in pursuing his complaint against the respondent, praying that he be allowed to withdraw the same.<sup>[12]</sup>

### **Findings of the IBP Investigating Commissioner**

On February 9, 2010, the Investigating Commissioner issued a Report and Recommendation<sup>[13]</sup> which found the respondent guilty of representing conflicting interests. Thus:

Based on the complaint and the answer thereto, this Commission finds that there is no question that the respondent is the counsel in the case filed by [Kiyoshi] and Estrelieta against the building contractor, Carlos Amasula. Such engagement remained until July 31, 2007 when [Kiyoshi] executed his "Revocation of Special Power of Attorney and Termination of Attorney".

Thus, when respondent entered his appearance as counsel for Estrelieta and her brother Manuel in the Falsification complaint (I.S. No. 2007-61), the respondent was still the counsel of [Kiyoshi] in the Amasula case. The defense of the respondent that his client was actually Manuel and not [Kiyoshi] and Estrelieta goes contrary to basic principles of law. The respondent admitted that Manuel was acting as mere agent of [Kiyoshi] and Estrelieta by virtue of a Special Power of Attorney. The respondent, therefore, can not deny that Manuel's principals, [Kiyoshi] and Estrelieta, were his real clients.

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Furthermore, when Estrelieta and Manuel were subjected to preliminary investigation for the Falsification charges which was filed by [Kiyoshi] through his representative Danilo Estocoming and Kazuhiro Sampie, respondent consciously and deliberately ran in conflict with his duty to [Kiyoshi] by appearing as counsel for Estrelieta and Manuel. The respondent continued to represent Estrelieta and Manuel opposite [Kiyoshi] when probable cause was found against his clients, on appeal with the Department of Justice and even when the information was filed against them (Criminal Case C-170).

The same situation existed with Civil Case No. 2007-14067 as the respondent appeared opposite [Kiyoshi] despite the fact that he was still [Kiyoshi's] counsel in the Amasula case.<sup>[14]</sup> (Citation omitted)

The Investigating Commissioner absolved the respondent from the charge of disrespect to the court, asserting that the use of the phrase "with a grain of salt" is not offensive. The Investigating Commissioner likewise pointed out that no evidence was presented to show that the respondent had spread rumor to malign the complainant.

The Investigating Commissioner recommended that the respondent be suspended from the practice of law for a period of six (6) months.

### **Findings of the IBP Board of Governors**

In a Notice of Resolution<sup>[15]</sup> dated June 27, 2011, the IBP Board of Governors resolved to adopt and approve the Report and Recommendation of the Investigating Commissioner, finding the same to be fully supported by the evidence on record and the applicable laws and rules.

The respondent sought to reconsider the Resolution dated June 27, 2011,<sup>[16]</sup> but the IBP Board of Governors denied his motion in its Resolution<sup>[17]</sup> dated January 3,

2013.

### Issue

The issue in this case is whether the respondent should be administratively sanctioned based on the allegations in the Complaint.

### Ruling of the Court

After a careful perusal of the records, the Court agrees with the findings and the recommendations of the Investigating Commissioner and the IBP Board of Governors.

Section 27, Rule 138 of the Rules of Court provides that a lawyer may be disbarred or suspended from the practice of law, *inter alia*, for gross misconduct. Thus:

*Sec. 27. Disbarment or suspension of attorneys by Supreme Court, grounds therefore. — A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before the admission to practice, or for a wilful disobedience appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice. (Emphasis ours)*

A lawyer may be suspended or disbarred for any misconduct showing any fault or deficiency in his moral character, honesty, probity or good demeanor.<sup>[18]</sup> Gross misconduct is any inexcusable, shameful or flagrant unlawful conduct on the part of a person concerned with the administration of justice; *i.e.*, conduct prejudicial to the rights of the parties or to the right determination of the cause. The motive behind this conduct is generally a premeditated, obstinate or intentional purpose.<sup>[19]</sup>

Concomitant to the foregoing, Rule 15.03, Canon 15 of the Code of Professional Responsibility provides that:

Rule 15.03. – A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts.

"A lawyer may not, without being guilty of professional misconduct, act as counsel for a person whose interest conflicts with that of his present or former client."<sup>[20]</sup> It is only upon strict compliance with the condition of full disclosure of facts that a lawyer may appear against his client; otherwise, his representation of conflicting interests is reprehensible.<sup>[21]</sup> Such prohibition is founded on principles of public policy and good taste as the nature of the lawyer-client relations is one of trust and confidence of the highest degree.<sup>[22]</sup>

In *Quiambao v. Atty. Bamba*,<sup>[23]</sup> the Court explained the concept of conflict of interest. Thus: