

## **SECOND DIVISION**

**[ A.C. NO. 5108, May 26, 2005 ]**

**ROSA F. MERCADO, COMPLAINANT, VS. ATTY. JULITO D. VITRIOLO, RESPONDENT.**

### **DECISION**

**PUNO, J.:**

Rosa F. Mercado filed the instant administrative complaint against Atty. Julito D. Vitriolo, seeking his disbarment from the practice of law. The complainant alleged that respondent maliciously instituted a criminal case for falsification of public document against her, a former client, based on confidential information gained from their attorney-client relationship.

Let us first hearken to the facts.

Complainant is a Senior Education Program Specialist of the Standards Development Division, Office of Programs and Standards while respondent is a Deputy Executive Director IV of the Commission on Higher Education (CHED).<sup>[1]</sup>

Complainant's husband filed Civil Case No. 40537 entitled "Ruben G. Mercado v. Rosa C. Francisco," for annulment of their marriage with the Regional Trial Court (RTC) of Pasig City. This annulment case had been dismissed by the trial court, and the dismissal became final and executory on July 15, 1992.<sup>[2]</sup>

In August 1992, Atty. Anastacio P. de Leon, counsel of complainant, died. On February 7, 1994, respondent entered his appearance before the trial court as collaborating counsel for complainant.<sup>[3]</sup>

On March 16, 1994, respondent filed his Notice of Substitution of Counsel,<sup>[4]</sup> informing the RTC of Pasig City that he has been appointed as counsel for the complainant, in substitution of Atty. de Leon.

It also appears that on April 13, 1999, respondent filed a criminal action against complainant before the Office of the City Prosecutor, Pasig City, entitled "Atty. Julito Vitriolo, et al. v. Rose Dela Cruz F. Mercado," and docketed as I.S. No. PSG 99-9823, for violation of Articles 171 and 172 (falsification of public document) of the Revised Penal Code.<sup>[5]</sup> Respondent alleged that complainant made false entries in the Certificates of Live Birth of her children, Angelica and Katelyn Anne. More specifically, complainant allegedly indicated in said Certificates of Live Birth that she is married to a certain Ferdinand Fernandez, and that their marriage was solemnized on April 11, 1979, when in truth, she is legally married to Ruben G. Mercado and their marriage took place on April 11, 1978.

Complainant denied the accusations of respondent against her. She denied using any other name than "Rosa F. Mercado." She also insisted that she has gotten married only once, on April 11, 1978, to Ruben G. Mercado.

In addition, complainant Mercado cited other charges against respondent that are pending before or decided upon by other tribunals – (1) libel suit before the Office of the City Prosecutor, Pasig City;<sup>[6]</sup> (2) administrative case for dishonesty, grave misconduct, conduct prejudicial to the best interest of the service, pursuit of private business, vocation or profession without the permission required by Civil Service rules and regulations, and violations of the "Anti-Graft and Corrupt Practices Act," before the then Presidential Commission Against Graft and Corruption;<sup>[7]</sup> (3) complaint for dishonesty, grave misconduct, and conduct prejudicial to the best interest of the service before the Office of the Ombudsman, where he was found guilty of misconduct and meted out the penalty of one month suspension without pay;<sup>[8]</sup> and, (4) the Information for violation of Section 7(b)(2) of Republic Act No. 6713, as amended, otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees before the Sandiganbayan.<sup>[9]</sup>

Complainant Mercado alleged that said criminal complaint for falsification of public document (I.S. No. PSG 99-9823) disclosed confidential facts and information relating to the civil case for annulment, then handled by respondent Vitriolo as her counsel. This prompted complainant Mercado to bring this action against respondent. She claims that, in filing the criminal case for falsification, respondent is guilty of breaching their privileged and confidential lawyer-client relationship, and should be disbarred.

Respondent filed his Comment/Motion to Dismiss on November 3, 1999 where he alleged that the complaint for disbarment was all hearsay, misleading and irrelevant because all the allegations leveled against him are subject of separate fact-finding bodies. Respondent claimed that the pending cases against him are not grounds for disbarment, and that he is presumed to be innocent until proven otherwise.<sup>[10]</sup> He also states that the decision of the Ombudsman finding him guilty of misconduct and imposing upon him the penalty of suspension for one month without pay is on appeal with the Court of Appeals. He adds that he was found guilty, only of simple misconduct, which he committed in good faith.<sup>[11]</sup>

In addition, respondent maintains that his filing of the criminal complaint for falsification of public documents against complainant does not violate the rule on privileged communication between attorney and client because the bases of the falsification case are two certificates of live birth which are public documents and in no way connected with the confidence taken during the engagement of respondent as counsel. According to respondent, the complainant confided to him as then counsel only matters of facts relating to the annulment case. Nothing was said about the alleged falsification of the entries in the birth certificates of her two daughters. The birth certificates are filed in the Records Division of CHED and are accessible to anyone.<sup>[12]</sup>

In a Resolution dated February 9, 2000, this Court referred the administrative case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.<sup>[13]</sup>

The IBP Commission on Bar Discipline set two dates for hearing but complainant failed to appear in both. Investigating Commissioner Rosalina R. Datiles thus granted respondent's motion to file his memorandum, and the case was submitted for resolution based on the pleadings submitted by the parties.<sup>[14]</sup>

On June 21, 2003, the IBP Board of Governors approved the report of investigating commissioner Datiles, finding the respondent guilty of violating the rule on privileged communication between attorney and client, and recommending his suspension from the practice of law for one (1) year.

On August 6, 2003, complainant, upon receiving a copy of the IBP report and recommendation, wrote Chief Justice Hilario Davide, Jr., a letter of desistance. She stated that after the passage of so many years, she has now found forgiveness for those who have wronged her.

At the outset, we stress that we shall not inquire into the merits of the various criminal and administrative cases filed against respondent. It is the duty of the tribunals where these cases are pending to determine the guilt or innocence of the respondent.

We also emphasize that the Court is not bound by any withdrawal of the complaint or desistance by the complainant. The letter of complainant to the Chief Justice imparting forgiveness upon respondent is inconsequential in disbarment proceedings.

We now resolve whether respondent violated the rule on privileged communication between attorney and client when he filed a criminal case for falsification of public document against his former client.

A brief discussion of the nature of the relationship between attorney and client and the rule on attorney-client privilege that is designed to protect such relation is in order.

In engaging the services of an attorney, the client reposes on him special powers of trust and confidence. Their relationship is strictly personal and highly confidential and fiduciary. The relation is of such delicate, exacting and confidential nature that is required by necessity and public interest.<sup>[15]</sup> Only by such confidentiality and protection will a person be encouraged to repose his confidence in an attorney. The hypothesis is that abstinence from seeking legal advice in a good cause is an evil which is fatal to the administration of justice.<sup>[16]</sup> Thus, the preservation and protection of that relation will encourage a client to entrust his legal problems to an attorney, which is of paramount importance to the administration of justice.<sup>[17]</sup> One rule adopted to serve this purpose is the attorney-client privilege: an attorney is to keep inviolate his client's secrets or confidence and not to abuse them.<sup>[18]</sup> Thus, the duty of a lawyer to preserve his client's secrets and confidence outlasts the termination of the attorney-client relationship,<sup>[19]</sup> and continues even after the client's death.<sup>[20]</sup> It is the glory of the legal profession that its fidelity to its client can be depended on, and that a man may safely go to a lawyer and converse with him upon his rights or supposed rights in any litigation with absolute assurance that