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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[A.C. No. 7325. January 21, 2015]

DR. DOMICIANO F. VILLAHERMOSA, SR., *complainant, vs.* **ATTY. ISIDRO L. CARACOL,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; RULES OF COURT; ATTORNEYS AND ADMISSION TO BAR; AUTHORITY OF ATTORNEY TO APPEAR; AN ATTORNEY IS PRESUMED TO BE PROPERLY AUTHORIZED TO APPEAR ON BEHALF OF HIS CLIENT BUT HE MUST SHOW HIS AUTHORITY TO ACT WHEN REQUIRED BY THE COURT.— The Rules of Court under Rule 138, Section 21 provides for a presumption of a lawyer's appearance on behalf of his client x x x. In *Land Bank of the Philippines v. Pamintuan Dev't. Co.,* this Court said that while a lawyer is not required to present proof of his representation, when a court requires that he show such authorization, it is imperative that he show his authority to act. x x x Lawyers must be mindful that an attorney has no power to act as counsel for a person without being retained nor may he appear in court without being employed unless by leave of court. If an attorney appears on a client's behalf without a retainer or the requisite authority neither the litigant whom he purports to represent nor the adverse party may be bound or affected by his appearance unless the purported client ratifies or is estopped to deny his assumed authority. If a lawyer corruptly or willfully appears as an attorney for a party to a

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case without authority, he may be disciplined or punished for contempt as an officer of the court who has misbehaved in his official transaction. We must also take into consideration that even if a lawyer is retained by a client, an attorney-client relationship terminates upon death of either client or the lawyer.

2. LEGAL ETHICS; ATTORNEYS; APPEARING AS COUNSEL FOR A PERSON WITHOUT AUTHORITY VIOLATES THE LAWYER'S OATH AND THE CODE OF PROFESSIONAL RESPONSIBILITY; PENALTY IN CASE AT BAR.— Here, Atty. Caracol was presumed to have authority when he appeared in the proceedings before the DARAB. The records are unclear at what point his authority to appear for Efren was questioned. Neither is there any indication that Villahermosa in fact questioned his authority during the course of the proceedings. However, Atty. Caracol knew that Efren had already passed away at the time he filed the Motion for Issuance of Second Alias Writ of Execution and Demolition. As an honest, prudent and conscientious lawyer, he should have informed the Court of his client's passing and presented authority that he was retained by the client's successors-in-interest and thus the parties may have been substituted. x x x Because of the particular nature of an attorney's function it is essential that they should act with fairness, honesty and candor towards the courts and his clients. Under Rule 10.01 of the Code of Professional Responsibility: "A lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead, or allow the Court to be misled by any artifice." This flows out from the lawyer's oath which each lawyer solemnly swears to uphold the law and court processes in the pursuit of justice. Thus, a lawyer must be more circumspect in his demeanor and attitude towards the public in general as agents of the judicial system. Here, Atty. Caracol, as observed by the IBP CBD, has been less than candid about his representation. We also observe that he has used underhanded means to attain his purpose. Atty. Caracol's blatant disregard of his duties as a lawyer cannot be countenanced. In view of his actions of contravening his lawyer's oath and in violation of Canons 8 and 10 and Rule 10.01 of the Code of Professional Responsibility we deem it proper to suspend him from the practice of law for a period of one year.

APPEARANCES OF COUNSEL

Manuel R. Ravanera for complainant.

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R E S O L U T I O N

VILLARAMA, JR., *J.*:

Before us is a complaint[1] for disbarment filed by Dr. Domiciano F. Villahermosa, Sr., against Atty. Isidro L. Caracol for deceit, gross misconduct and violation of oath under Section 27,[2] Rule 138 of the Rules of Court.

Villahermosa is respondent in two land cases[3] involving cancellation of emancipation patents and transfer certificates of title, cancellation of special power of attorney and deeds of absolute sale and recovery of ownership and possession of parcels of land derived from Original Certificate of Title (OCT) No. 433 which covered 23.3018 hectares of land in Valencia, Bukidnon. Counsel on record for plaintiff was Atty. Fidel Aquino.

OCT No. 433 was a homestead patent granted to Micael Babela who had two sons, Fernando and Efren. As legal heirs of Micael, Fernando received 53,298 square meters while Efren received 33,296 square meters. Subsequently, Transfer Certificates of Title (TCTs) were issued in their respective names.

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[1] Filed on August 29, 2006. *Rollo*, pp. 1-12.

[2] RULES OF COURT, Rule 138, Section 27 provides:

SEC. 27. *Disbarment or suspension of attorneys by Supreme Court; grounds therefor*. — 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 admission to practice, or for a wilful disobedience of any lawful order of a superior court, or for corruptly or willfully 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.

[3] DARAB Case Nos. X-087, *Fernando Babela and Lourdes Boholano v. Hermogena Nipot-Nipot, Danilo Nipot-Nipot and Spouses Raymunda C. Villahermosa and Domiciano Villahermosa*, and X-088, *Efren B. Babela v. Hermogena Nipot-Nipot, Danilo Nipot-Nipot and Spouses Raymunda C. Villahermosa and Domiciano Villahermosa*.

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When the agrarian reform law[4] was enacted on October 21, 1972, emancipation patents and titles were issued to Hermogena and Danilo Nipotnipot, beneficiaries of the program, who in turn sold the parcels of land to complainant's spouse, Raymunda Villahermosa. A deed of absolute sale was executed in favor of Raymunda.

On March 2, 1994, the Department of Agrarian Reform Adjudication Board (DARAB) issued a decision ordering the cancellation of the emancipation patents and TCTs derived from OCT No. 433 stating that it was not covered by the agrarian reform law. This decision was appealed to and affirmed by the DARAB Central Board and the Court of Appeals.

On September 25, 2002, Atty. Caracol, as "Add'l Counsel for the Plaintiffs-Movant," filed a motion for execution with the DARAB, Malaybalay, Bukidnon praying for the full implementation of the March 2, 1994 decision.[5]

On December 20, 2005, Atty. Caracol filed a Motion for Issuance of Second Alias Writ of Execution and Demolition[6] which he signed as "Counsel for the Plaintiff Efren Babela."[7]

Villahermosa filed this complaint[8] alleging that Atty. Caracol had no authority to file the motions since he obtained no authority from the plaintiffs and the counsel of record. Villahermosa posited that Efren could not have authorized Atty. Caracol to file the second motion because Efren had already been dead[9] for more

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[4] P.D. No. 27 entitled, DECREEING THE EMANCIPATION OF TENANTS FROM THE BONDAGE OF THE SOIL, TRANSFERRING TO THEM THE OWNERSHIP OF THE LAND THEY TILL AND PROVIDING THE INSTRUMENTS AND MECHANISM THEREFOR.

[5] *Rollo*, pp. 16-18.

[6] *Id*. at 27-29.

[7] *Id*. at 29.

[8] The complaint was filed with this Court and was referred to the IBP for Investigation, Report and Recommendation on June 13, 2007. *Id*. at 69.

[9] Died July 23, 2004. *Id*. at 30.

than a year. He claimed that Atty. Caracol's real client was a certain Ernesto I. Aguirre, who had allegedly bought the same parcel of land. Villahermosa presented affidavits of Efren's widow[10] and daughter[11] both stating that Efren never executed a waiver of rights and that the parcel of land was sold to Villahermosa through a deed of sale. Both also stated that they were familiar with Efren's signature. They state that the signature in the waiver was different from his usual signature. Villahermosa averred that Atty. Caracol committed deceit and gross misconduct.

In addition, Villahermosa claimed that Atty. Caracol introduced falsified and manufactured evidence into the proceedings. Atty. Caracol, in introducing a document denominated as Waiver of Rights where Efren waived all his rights in favor of Ernesto Aguirre, was able to secure the execution of the judgment in one of the cases[12] in favor of Ernesto Aguirre. Villahermosa also filed a case[13] for falsification of public document and use of falsified document against Ernesto Aguirre and Atty. Caracol.[14]

Atty. Caracol insists that Efren and Ernesto authorized him to appear as "additional counsel." He said that he had consulted Atty. Aquino who advised him to go ahead with the filing. Moreover, he stated that he was not aware that there was a waiver of rights executed in Ernesto Aguirre's favor.

In its Report and Recommendation,[15] the Integrated Bar of the Philippines Commission on Bar Discipline (IBP CBD) found that Atty. Caracol committed deceitful acts and misconduct. It found that respondent did not present credible evidence to controvert the allegation that he was not authorized by plaintiff

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[10] *Rollo*, p. 23.

[11] *Id*. at 22.

[12] DARAB Case No. X-088.

[13] *Rollo*, p. 60.

[14] In its Joint Resolution dated September 5, 2006, the Office of the Regional State Prosecutor dismissed the case as to Atty. Caracol for lack of merit. *Id*. at 66.

[15] *Rollo*, pp. 232-239. Penned by Commissioner Manuel T. Chan.

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or counsel of record. Respondent admitted that at the time of the filing of the second motion, Efren was dead. It noted that Atty. Caracol did not explain how he obtained the authority nor did he present any proof of the authority. However, there was insufficient evidence to hold him liable for falsification.

The IBP CBD stated that Atty. Caracol clearly misled and misrepresented to the DARAB, Region X that he was counsel of Efren to protect the interest of Ernesto Aguirre, his real client, violating his oath as a lawyer. It thus recommended that Atty. Caracol be suspended from the practice of law for a period of five years.

The IBP Board of Governors adopted the report and recommendation but modified the penalty to one year suspension from the practice of law.[16] Atty. Caracol moved for reconsideration[17] but was denied.[18]

Atty. Caracol filed a notice of appeal[19] which this Court returned to him since no legal fees are required in administrative cases.[20]

We adopt the findings of the IBP.

The Rules of Court under Rule 138, Section 21 provides for a presumption of a lawyer's appearance on behalf of his client, hence:

SEC. 21. *Authority of attorney to appear*. – An attorney is **presumed to be properly authorized to represent any cause in which he appears**, and no written power of attorney is required to authorize him to appear in court for his client, **but** the presiding **judge may**, **on motion of either party and on reasonable grounds therefor being shown**, **require any attorney who assumes the right to appear in a case to produce or prove the authority** under

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[16] *Id*. at 231.

[17] *Id*. at 240-252.

[18] *Id*. at 262.

[19] *Id*. at 273-274.

[20] Letter from the Office of the Bar Confidant dated November 19, 2014. *Id*. at 277.

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which he appears, and to disclose, whenever pertinent to any issue, the name of the person who employed him, and may thereupon make such order as justice requires. An attorney willfully appearing in court for a person without being employed, unless by leave of the court, may be punished for contempt as an officer of the court who has misbehaved in his official transactions. (Emphases supplied)

In *Land Bank of the Philippines v. Pamintuan Dev't. Co.,*[21] this Court said that while a lawyer is not required to present proof of his representation, when a court requires that he show such authorization, it is imperative that he show his authority to act. Thus:

A lawyer is not even required to present a written authorization from the client. In fact, the absence of a formal notice of entry of appearance will not invalidate the acts performed by the counsel in his client's name. However, [a] court, on its own initiative or on motion of the other party may require a lawyer to adduce authorization from the client.[22]

Lawyers must be mindful that an attorney has no power to act as counsel for a person without being retained nor may he appear in court without being employed unless by leave of court.[23] If an attorney appears on a client's behalf without a retainer or the requisite authority neither the litigant whom he purports to represent nor the adverse party may be bound or affected by his appearance unless the purported client ratifies or is estopped to deny his assumed authority.[24] If a lawyer corruptly or willfully appears as an attorney for a party to a case without authority, he may be disciplined or punished for contempt as an officer of the court who has misbehaved in his official transaction.[25]

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[21] 510 Phil. 839 (2005).

[22] *Id*. at 844.

[23] Agpalo, *Legal and Judicial Ethics* (7th ed. 2002), p. 179.

[24] *Id*.

[25] *Id*.

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We must also take into consideration that even if a lawyer is retained by a client, an attorney-client relationship terminates upon death of either client or the lawyer.[26]

Here, Atty. Caracol was presumed to have authority when he appeared in the proceedings before the DARAB. The records are unclear at what point his authority to appear for Efren was questioned. Neither is there any indication that Villahermosa in fact questioned his authority during the course of the proceedings.

However, Atty. Caracol knew that Efren had already passed away at the time he filed the Motion for Issuance of Second Alias Writ of Execution and Demolition. As an honest, prudent and conscientious lawyer, he should have informed the Court of his client's passing and presented authority that he was retained by the client's successors-in-interest and thus the parties may have been substituted.[27]

We also note the separate opinion of Justice Isagani Cruz in *People v. Mendoza*[28] where he stated:

I am bothered by the improvident plea of guilty made by accused Juan Magalop, presumably upon the advice of his counsel, Atty. Isidro L. Caracol of the CLAO (now the PAO). It would seem that this

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[26] *Id*. at 176.

[27] While as a general rule, under Section 4, Rule 1 of the Rules of Civil Procedure, the rules of civil procedure do not apply to land registration and cadastral cases the same may apply in a suppletory character. RULES OF CIVIL PROCEDURE, Rule 3, Section 16, paragraph 1 provides:

SEC. 16. *Death of a party; duty of counsel*.—Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with this duty shall be a ground for disciplinary action.

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See also *The Heirs of the Late F. Nuguid Vda. de Haberer v. CA, et al.*, 192 Phil. 61 (1981).

[28] G.R. No. 80845, March 14, 1994, 231 SCRA 264.

lawyer was less than conscientious when he advised his indigent client to admit a crime the man did no[t] commit. As the *ponencia* observes, "outside of his improvident plea of guilt, there is absolutely no evidence against him – presented or forthcoming. From the evidence of the prosecution, there is no way by which Magalop could have been implicated."

It seems to me that if any one is guilty in this case, it is the PAO lawyer who, through an incredible lack of zeal in the discharge of his duties, was apparently willing, without any moral compunctions at all, and without proof, to consign an innocent man to prison.

The PAO is supposed to defend the accused, not to condemn them without cause. The defense counsel in this case did not seem to appreciate this responsibility when he prodded Magalop to plead guilty and waived the right to submit evidence in his behalf.[29]

While this observation does not serve to exacerbate Atty. Caracol's liability under the present circumstances, we would like to highlight the important role of an attorney in our judicial system. Because of the particular nature of an attorney's function it is essential that they should act with fairness, honesty and candor towards the courts and his clients.[30] Under Rule 10.01 of the Code of Professional Responsibility:

A lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead, or allow the Court to be misled by any artifice.

This flows out from the lawyer's oath which each lawyer solemnly swears to uphold the law and court processes in the pursuit of justice. Thus, a lawyer must be more circumspect in his demeanor and attitude towards the public in general as agents of the judicial system.

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[29] *Id*. at 271.

[30] CODE OF PROFESSIONAL RESPONSIBILITY, Canons 8 and 10 provide:

Canon 8 – A lawyer shall conduct himself with courtesy, fairness and candor toward his professional colleagues, and shall avoid harassing tactics against opposing counsel.

Canon 10 – A lawyer owes candor, fairness and good faith to the court.

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Here, Atty. Caracol, as observed by the IBP CBD, has been less than candid about his representation. We also observe that he has used underhanded means to attain his purpose. Atty. Caracol's blatant disregard of his duties as a lawyer cannot be countenanced. In view of his actions of contravening his lawyer's oath and in violation of Canons 8 and 10 and Rule 10.01 of the Code of Professional Responsibility we deem it proper to suspend him from the practice of law for a period of one year.

WHEREFORE, we find respondent Atty. Isidro L. Caracol **GUILTY.** Accordingly, we **SUSPEND** respondent Atty. Isidro L. Caracol from the practice of law for **ONE YEAR** effective upon finality of this Resolution, with a warning that a repetition of the same or similar act in the future will be dealt with more severely.

Let copies of this Resolution be furnished the Office of the Bar Confidant to be appended to respondent's personal record as an attorney, the Integrated Bar of the Philippines, the Department of Justice, and all courts in the country for their information and guidance.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Reyes, and *Jardeleza, JJ.,* concur.

EN BANC

[A.M. No. 09-6-1-SC. January 21, 2015]

RE: VIOLATION OF RULES ON NOTARIAL PRACTICE

SYLLABUS

1. LEGAL ETHICS; NOTARIES PUBLIC; ONLY PERSONS WHO ARE COMMISSIONED AS NOTARY PUBLIC MAY PERFORM NOTARIAL ACTS WITHIN THE