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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.C. No. 2614. June 29, 2000]

MAXIMO DUMADAG, *complainant, vs.* **ATTY. ERNESTO L. LUMAYA,** *respondent.*

SYNOPSIS

After having been indefinitely suspended by the Supreme Court in a Resolution dated May 21, 1991 for his Disloyalty to Clients, respondent filed protestations of his innocence, but was denied reconsideration. In July, 1994, respondent again filed a petition for the lifting of his suspension from the practice of law. The Supreme Court referred the matter to the IBP which recommended the lifting of his suspension. On January 10, 2000, seventy-one (71) year old respondent addressed a letter to the Chief Justice, again imploring and at the same time chiding the Court for 'slumbering' on acting upon the IBP Resolution in his favor.

To date, respondent has been suspended for more than nine (9) years. In ruling that respondent's indefinite suspension must be deservingly fixed to ten (10) years, the Supreme Court held: that respondent's insolent remonstrations that the Court has been sleeping on its job is only too deserving of rebuke; that the Court has the final say on the proper sanctions to be imposed on errant members; that respondent's indefinite suspension, while harsh, puts in his hands his fitness for

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readmission to the practice of law; but that respondent's unrepentant attitude and unwillingness to acknowledge his misconduct appeared not to have fully reformed him.

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; DISCIPLINARY ACTIONS AGAINST ATTORNEYS; ATTORNEY REBUKED FOR INSOLENT REMONSTRATIONS AGAINST THE SUPREME COURT; CASE AT BAR.** — The insolence of respondent's remonstrations that the Court has been sleeping on its job in acting upon his case not only underscores his callous disregard of the myriad administrative and judicial travails the Court has to contend with as the Tribunal of Last Resort, among them, the chronic problem of an overflowing docket of which his case is but one additional aggravation; it also betrays his absolute lack of appreciation and disrespect for the efforts and measures undertaken by the Court to cope with these concerns. Needless to state, such presumptuousness is only too deserving of rebuke.

2. **ID.; ID.; ID.; SUPREME COURT HAS FINAL SAY ON IMPOSITION OF SANCTIONS.** — Respondent must know that pursuant to Sections 1, 14, 15, 16, and 17 of Rule 139-B of the Revised Rules of Court the Court is neither bound by the findings of the IBP nor, much less, obliged to accept the same as a matter of course because as the Tribunal which has the final say on the proper sanctions to be imposed on errant members of both bench and bar, the Court has the prerogative of making its own findings and rendering judgment on the basis thereof rather than that of the IBP, OSG, or any lower court to whom an administrative complaint has been referred to for investigation and report.

3. **ID.; ID.; ID.; ID.; INDEFINITE SUSPENSION PURGES A LAWYER IN HIS OWN GOOD TIME OF HIS MISCONDUCT.** — While the harshness of an indefinite suspension, more so when viewed in the light of the prevailing circumstances of this case, can not be gainsaid, it must be stressed that — x x x the indefiniteness of respondent's suspension puts in his hands the key for the restoration of his

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rights and privileges as a lawyer until such time as he has purged himself of his misconduct and acknowledged the same by exhibiting appropriate repentance and demonstrating his willingness and capacity to live up to the exacting standards of conduct demanded from every member of the bar and officer of the court.

4. **ID.; ID.; ID.; ID.; ID.; INSISTENT PROTESTATIONS OF INNOCENCE INDICATES ATTORNEY'S UNREPENTANT ATTITUDE; TEN (10) YEAR SUSPENSION FROM LAW PRACTICE PROPER IN CASE AT BAR.** — For all respondent's protestations to the contrary, the Court is hardly convinced of his innocence for his culpability has been established and aptly adjudicated upon. x x x Respondent's suspension for more than nine (9) years to date, for his professional indiscretion, underscored by his insistent protestations of innocence, appears not to have fully reformed him and opened his eyes to the error of his ways. Considering such an unrepentant attitude and unwillingness to acknowledge his misconduct x x x respondent's suspension must deservingly be fixed at ten (10) years.

RESOLUTION

YNARES-SANTIAGO, *J.*:

On the basis of an administrative complaint for Unethical Practices, Conflict of Interest and Disloyalty To Clients dated December 22, 1983[1] filed by complainant against respondent praying that the corresponding disciplinary action be imposed on the latter, the case was referred to Office of the Solicitor General (OSG) by the Court[2] for investigation and report.

On February 26, 1990, the OSG submitted a Report[3] finding respondent culpable for infidelity and disloyalty to his client,

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[1] *Rollo*, p. 1.

[2] *Ibid.*, p. 61.

[3] *Id.*, pp. 63-86.

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negligence of duty, unethical practices and violation of his lawyer's oath.[4] As penalty, the OSG recommended that after due hearing, "respondent be suspended from the practice of law for not less than five (5) years."[5]

Thereafter, in a Resolution dated May 21, 1991[6] the Court found that respondent made a "clear breach of the canons of professional responsibility"[7] and suspended respondent indefinitely from the practice of law.[8]

A "Petition For Reinvestigation and Reconsideration,"[9] filed on July 8, 1991, was subsequently denied by the Court per its Resolution dated January 13, 1992.[10]

The records show that thereafter, respondent sent a letter dated February 17, 1992.[11] Stressing in the said letter that he was not seeking a reconsideration of the denial of his petition for reinvestigation, respondent averred in sum that he was a "not very healthy" sixty-two (62) year old who merely wanted to know how long he would stay suspended and if he was disqualified to be issued a commission as a notary public considering that his commission was not renewed. This letter was noted by the Court in a Resolution dated March 30, 1992.[12]

On June 18, 1992, respondent filed a Manifestation dated May 15, 1992[13] where he prayed that the Court issue a resolution or decision on his averments that:

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[4] *Id.*, p. 86.

[5] *Id.*

[6] *Id.*, pp. 147-154.

[7] *Id.*, p. 153.

[8] *Id.*, p. 154.

[9] *Id.*, pp. 143-144.

[10] *Id.*, p. 166.

[11] *Id.*, pp. 167-168.

[12] *Id.*, p. 170.

[13] *Id.*, pp. 171-172.

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1.] he has been suspended from the practice of law and denied a notarial commission for more than one (1) year already;

2.] for lack of practicing lawyers and notaries public in the Municipality of Baganga, Davao Oriental where Branch VII of the Regional Trial Court and the Second Municipal Court set a popular public clamor which constrained the undersigned to file the manifestation;

3.] more than fifty percent (50%) of the pending civil and criminal cases were cases handled by the respondent and these cases are still pending resolution especially due to the lack of lawyers in the municipality considering that most of the litigants are poor and could not afford to hire lawyers from Mati, the capital town of Davao Oriental or from Davao City where plane fare coming from said places is Six Hundred Pesos (P600.00) one way with no hotels nor lodges in Baganga;

4.] there is no regular judge in Baganga after the retirement of Judge Osias Y. Verano last March 5, 1992 and many detained accused are in jail without hope for an early resolution of their cases coupled with the fact that respondent is still under suspension and they cannot hire "exorbitant" lawyers;

5.] he has been advised to secure petitions to be signed by all *Barangay* Chairmen in the Eighteen (18) *Barangays* of the municipality, the Seventy-Four (74) Chapters of the GKK, all NGOs, other religious and civic organizations and to submit them to the Supreme Court to request the Court to lift his indefinite suspension so that he may help those who are actually helpless and so that he may be issued a notarial commission in order to help those who need notarial assistance without fear of being charged beyond their capacity to pay;

6.] the Court can refer to the records of Branch VII, RTC, Baganga, Davao Oriental and the same would show that most of the civil and criminal cases resolved or decided therein were cases handled by respondent;

7.] the filing of the Manifestation is for the purpose of requesting the Court to provide him with advice as to whether the filing of a petition was necessary to lift the order of his indefinite suspension as well as the issuance of a notarial commission.

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The foregoing manifestation was noted by the Court in a Resolution dated July 15, 1992.[14]

On July 26, 1994, respondent filed a Petition For The Lifting Of Respondent's Suspension From The Practice Of Law[15] which the Court referred to the Integrated Bar of the Philippines (IBP) for evaluation, report and recommendation in a Resolution dated March 13, 1995.[16]

In a Report and Recommendation dated August 14, 1998, the Investigating Commissioner recommended the lifting of the indefinite suspension of respondent. On November 5, 1998, the Board of Governors of the IBP passed Resolution No. XIII-98-171 adopting the recommendation of the Investigating Commissioner. In acting favorably on respondent's petition, the Investigating Commissioner pointed out that:

> Respondent's plea is anchored on the following allegations:
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> "x x x x x x x x x
>
> 4. That respondent accepted his suspension as God's grace but due to respondent's knowledge in law, he has been continuously approached for legal advice or assistance and what respondent could do is prepare for them pleadings or documents and to secure practitioners to do what I am suspended from doing;
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> 5. That respondent has remained busy in his desire to save and as a matter of fact, with humility, respondent is the Elected Federation President of the Federation of Senior Citizens and the Invalid[s]. He is a member of the *Lupong Tagapayapa* and has performed duties as Chairman of the *Pangkat Tagapayapa* of Barangay Central, Baganga, Davao Oriental;
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> 6. That respondent, however, has observed that there are poor people who actually need the services of a Lawyer, and whose hunger for justice hang mercifully on a cloud of

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[14] *Id.*, p. 175.

[15] *Id.*, pp. 177-178.

[16] *Id.*, p. 196.

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uncertainties (*sic*), as they say, here is the jurisdiction of Branch VII at Baganga, Davao Oriental;

7. That actually there are no permanent resident lawyer[s] in the Municipalities of Boston, Cateel, Baganga and Caraga, all in the First District of Davao Oriental. The three practicing lawyer[s] come only to Baganga during court hearings and since they reside in the City of Davao their fees are high. Notarial services could not be rendered regularly;

8. That I feel capable to fill the vacuum and be able to serve the poor people but there is need for the undersigned to request and pray the Supreme Court to lift the suspension imposed.

In a letter addressed to the Chief Justice dated January 10, 2000, respondent who turned Seventy-One (71) years old last October 25, 1999, once again implores and at the same time chides the Court for 'slumbering' on acting upon the IBP Resolution to lift his indefinite suspension, although he still insists on his innocence.

The insolence of respondent's remonstrations that the Court has been sleeping on its job in acting upon his case not only underscores his callous disregard of the myriad administrative and judicial travails the Court has to contend with as the Tribunal of Last Resort, among them, the chronic problem of an overflowing docket of which his case is but one additional aggravation; it also betrays his absolute lack of appreciation and disrespect for the efforts and measures undertaken by the Court to cope with these concerns. Needless to state, such presumptuousness is only too deserving of rebuke.

Respondent must know that the Court is neither bound by the findings of the IBP nor, much less, obliged to accept the same as a matter of course[17] because as the Tribunal which has the final say on the proper sanctions to be imposed on errant members of both bench and bar,[18] the Court has the prerogative

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[17] See *Felicidad Cottam v. Atty. Estrella O. Laysa,* A.C. No. 4834, 29 February 2000, p. 4.

[18] Sections 15, 16, and 17, Rule 139-B, Revised Rules of Court.

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of making its own findings and rendering judgment on the basis thereof rather than that of the IBP, OSG, or any lower court to whom an administrative complaint has been referred to for investigation and report. Indeed, Sections 1, 14, 15, 16 and 17 of Rule 139-B of the Revised Rules of Court state that:

SEC. 1. *How instituted.* — Proceedings for the disbarment, suspension, or discipline of attorneys may be taken by the Supreme Court *motu proprio*, or by the Integrated Bar of the Philippines (IBP) upon the verified complaint of any person. The complaint shall state clearly and concisely the facts complained of and shall be supported by affidavits of persons having personal knowledge of the facts therein alleged and/or by such documents as may substantiate said facts.

The IBP Board of Governors may, *motu proprio* or upon referral by the Supreme Court or by a Chapter Board of Officers, or at the instance of any person, initiate and prosecute proper charges against any erring attorneys including those in the government service; *Provided*, however, that all charges against Justices of the Court of Appeals and the *Sandiganbayan*, and Judges of the Court of Tax Appeals and lower courts, even if lawyers are charged with them, *shall be filed with the Supreme Court; Provided, further,* that charges filed against Justices and Judges before the IBP, including those filed prior to their appointment in the Judiciary, shall *immediately be forwarded to the Supreme Court for disposition and adjudication.* (italics supplied)

Six (6) copies of the verified complaint shall be filed with the Secretary of the IBP or the Secretary of any of its chapters who shall forthwith transmit the same to the IBP Board of Governors for assignment to an investigator.[19]

SEC. 14. *Report of the Solicitor General or other Court designated Investigator.* — Based upon the evidence adduced at the investigation, the Solicitor General or other Investigator designated by the Supreme Court shall submit to the Supreme Court a report containing his findings of fact and recommendations together with the record and all the evidence presented in the investigation *for the final action of the Supreme Court.* (italics supplied).

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[19] As amended by Bar Matter No. 1960, 1 May 2000.

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SEC. 15. *Suspension of attorney by Supreme Court.* — After receipt of respondent's answer or lapse of the period therefor, the Supreme Court, motu proprio, or at the instance of the IBP Board of Governors upon the recommendation of the Investigators, may suspend an attorney from the practice of his profession for any of the causes specified in Rule 138, Section 27, during the pendency of the investigation *until such suspension is lifted by the Supreme Court.* (italics supplied)

SEC. 16. *Suspension of attorney by the Court of Appeals or a Regional Trial Court.* — The Court of Appeals or Regional Trial Court may suspend an attorney from practice of any of the causes named in Rule 138, Section 27, *until further action of the Supreme Court in the case.* (italics supplied)

SEC. 17. *Upon suspension by Court of Appeals or Regional Trial Court, further proceedings in Supreme Court.* — Upon such suspension, the Court of Appeals or a Regional Trial Court shall forthwith transmit to the Supreme Court a certified copy of the order of suspension and a full statement of the facts upon which the same was based. Upon receipt of such certified copy and statement, *the Supreme Court shall make full investigation of the case and may revoke, shorten or extend the suspension, or disbar the attorney as the facts may warrant.* (italics supplied)

For all respondent's protestations to the contrary, the Court is hardly convinced of his innocence for his culpability has been established and aptly adjudicated upon. While the harshness of an indefinite suspension, more so when viewed in the light of the prevailing circumstances of this case, can not be gainsaid, it must be stressed that —

The indefiniteness of respondent's suspension, far from being "cruel" or "degrading" or "inhuman" has the effect of placing, as it were, the key to the restoration of his rights and privileges as a lawyer in his own hands. *That sanction has the effect of giving respondent the chance to purge himself in his own good time* of his contempt and misconduct by acknowledging such misconduct, exhibiting appropriate repentance and demonstrating his willingness and capacity to live up to the exacting standards of conduct

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rightly demanded from every member of the bar and officer of the courts.[20]

Respondent's suspension for more than nine (9) years to date, for his professional indiscretion, underscored by his insistent protestations of innocence, appears not to have fully reformed him and opened his eyes to the error of his ways. Such an unrepentant attitude and unwillingness to acknowledge his misconduct puts his fitness for re-admission to the practice of law under serious inquiry. Respondent must always remember that —

> [T]he practice of law is a privilege burdened with conditions. Adherence to the rigid standards of mental fitness, maintenance of the highest degree of morality and faithful compliance with the rules of the legal profession are the conditions required for remaining a member of good standing of the bar and for enjoying the privilege to practice law. The Supreme Court, as guardian of the legal profession, has ultimate disciplinary power over attorneys. This authority to discipline its members is not only a right but a bounden duty as well x x x That is why respect and fidelity to the Court is demanded of its members.[21]

As has been stated earlier, the indefiniteness of respondent's suspension puts in his hands the key for the restoration of his rights and privileges as a lawyer. Until such time as he has purged himself of his misconduct and acknowledged the same by exhibiting appropriate repentance and demonstrating his willingness and capacity to live up to the exacting standards of conduct demanded from every member of the bar and officer of the court, respondent's suspension must deservingly be fixed at ten (10) years. Consequently, the same may only be lifted after the expiration of the said period, counted from the time when his suspension actually commenced.

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[20] *Zaldivar v. Sandiganbayan*, 170 SCRA 1 [1989].

[21] *Adez Realty, Inc. v. CA*, 251 SCRA 201 [1995], citing *Zaldivar v. Sandiganbayan*, 221 SCRA 132 [1993].

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WHEREFORE, in view of all the foregoing, the period of respondent's suspension from the practice of law is hereby fixed at Ten (10) Years. The "Petition For The Lifting Of Respondent's Suspension From The Practice Of Law" is, therefore, DENIED.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, and *De Leon, Jr., JJ.,* concur.

FIRST DIVISION

[G.R. No. 113725. June 29, 2000]

JOHNNY S. RABADILLA,[1] *petitioner, vs.* **COURT OF APPEALS AND MARIA MARLENA**[2] **COSCOLUELLA *Y* BELLEZA VILLACARLOS,** *respondents.*

SYNOPSIS

Dr. Jorge Rabadilla, in a codicil of Aleja Belleza, was instituted devisee of Lot No. 1392 with an area of 511,855 square meters with the obligation to deliver 100 piculs of sugar to herein private respondent every year during the latter's lifetime. The codicil provides that the obligation is imposed not only on the instituted heir but also to his successors-in-interest and that in case of failure to deliver, private respondent shall seize the property and turn it over to the testatrix's "near descendants." Dr. Rabadilla died and was survived by his wife and children, one of whom is herein petitioner. Private

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[1] Was spelled interchangeably in *Rollo* as Ravadilla.

[2] Was spelled interchangeably in *Rollo* as Marlina.