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EN BANC

[A.C. No. 8313. July 14, 2015]

PILAR IBANA-ANDRADE and CLARE SINFOROSA ANDRADE-CASILIHAN, *complainants, vs.* **ATTY. EVA PAITA-MOYA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; RULES OF COURT; DISBARMENT OR SUSPENSION OF ATTORNEYS; UNAUTHORIZED PRACTICE OF LAW; PRACTICE OF LAW DESPITE SUSPENSION ORDER, A CASE OF; PENALTY IN CASE AT BAR.— The issue in this case falls solely on the question of whether Respondent engaged in the unauthorized practice of law, that is, the practice of law despite the clear language of this Court's suspension order. The Report and Recommendation recommended that Respondent be found liable. We adopt the same, with modification. The suspension order was received by Respondent on July 15, 2008. Despite this, she continued to practice law in various cases, as shown by the pleadings she filed and the certifications noted by the Report. In fact, she continued receiving various fees for her services throughout the duration of her suspension. It is important to note that her defense consists of an admission that she was indeed suspended, and allegedly served her suspension. She claimed that she never received the resolution that had allegedly suspended her. By logical inference therefore, her sole defense is ignorance of the resolution that suspended her. However, the records of this very Court belie her statements. x x x Moreover, the Office of the Bar Confidant issued a Certification dated 8 May 2009 that **the suspension of Atty. Paita-Moya in A.C. No. 7494 had not yet been lifted.** x x x [W]e had already stated the standard for discipline upon erring lawyers who continue practicing despite being suspended by the Court, *viz*: "Under Section 27, Rule 138 of the Rules of Court, willful disobedience to any lawful order of a superior court is a ground for disbarment or suspension from the practice of law x x x." The Commissioner recommended the suspension of respondent from the active practice of law for six (6) months with stern warning that any similar infraction in the future would be dealt with more severely. In light of this and x x x jurisprudence x x x, we adopt the recommendation.

Supreme Court E-Library

2. ID.; ID.; ID.; LIFTING OF AN ORDER SUSPENDING A LAWYER FROM THE PRACTICE OF LAW; GUIDELINES.— We had laid down guidelines in ***Maniago v. De Dios***, "IN LIGHT OF THE FOREGOING, it is hereby RESOLVED that the following guidelines be observed in the matter of the lifting of an order suspending a lawyer from the practice of law: (1) After a finding that respondent lawyer must be suspended from the practice of law, the Court shall render a decision imposing the penalty; (2) Unless the Court explicitly states that the decision is immediately executory upon receipt thereof, respondent has 15 days within which to file a motion for reconsideration thereof. The denial of said motion shall render the decision final and executory; (3) Upon the expiration of the period of suspension, respondent shall file a Sworn Statement with the Court, through the Office of the Bar Confidant, stating therein that he or she has desisted from the practice of law and has not appeared in any court during the period of his or her suspension; (4) Copies of the Sworn Statement shall be furnished to the Local Chapter of the IBP and to the Executive Judge of the courts where respondent has pending cases handled by him or her, and/or where he or she has appeared as counsel; (5) The Sworn Statement shall be considered as proof of respondents compliance with the order of suspension; (6) Any finding or report contrary to the statements made by the lawyer under oath shall be a ground for the imposition of a more severe punishment, or disbarment, as may be warranted."

D E C I S I O N

SERENO, *C.J.*:

This is an administrative case filed against Atty. Eva Paita-Moya by Pilar Ibana-Andrade and Clare Sinforosa Andrade-Casilihan. On 7 December 2009, this Court, through the First Division, issued a Resolution[1] referring the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation or decision within ninety (90) days from the receipt of records.

After the proceedings, the IBP Commission on Bar Discipline transmitted to the Supreme Court on 18 November 2013 its Notice of Resolution,[2] alongside the Records of the case. The IBP Board

[1] *Rollo*, p. 51.

[2] *Id.* at 149.

Supreme Court E-Library

of Governors also passed a Resolution[3] on 13 February 2013 adopting and approving the Report and Recommendation[4] of the Investigating Commissioner for this case.

The Report and Recommendation summarizes the facts of this case as follows:

> Here is complainants' version. On October 3, 2007, complainant Pilar Andrade, stockholder and Treasurer of Mabini College Inc. filed Civil Case No. 7617 for Injunction, Mandamus and Damages before the Regional Trial Court of Daet, Camarines Norte when she was illegally suspended by Luz Ibana-Garcia, Marcel Lukban and respondent Atty. Eva Paita-Moya. In the said case then pending before the Honorable Executive Judge Arniel Dating, respondent Atty. Eva Paita-Moya appeared as counsel for all respondents.
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> Complainant Clare Sinforosa I. Andrade-Casilihan likewise filed an illegal dismissal case against Mabini College Inc. and now pending before the Honorable Court of Appeals. In the said labor case, respondent stood as counsel for Mabini College, Inc. and co-respondent Luz I. Garcia and Marcel Lukban.
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> In another illegal dismissal case filed by Alven Bernardo I. Andrade on September 28, 2005 currently pending before the Court of Appeals, respondent acted as counsel for Mabini College, Inc. Luz I. Garcia and Marcel Lukban.
>
> After the aforementioned cases were filed, complainants had found out that on June 27, 2008, the Honorable Supreme Court promulgated a resolution in the case entitled Wilson Cham versus Atty. Eva Paita-Moya docketed as A.C. No. 7484 suspending respondent from the practice of law for one month.
>
> Complainants were surprised. They later got a copy of the Office of the Bar Confidant's certification confirming that until date (apparently May 6, 2009, the dare [sic] OR No. 0304748 was issued) respondent's suspension order has not yet been lifted.
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> On June 2, 2009, complainants were able to obtain a copy of the Supreme Court Circular No. 51-2009 informing all courts that respondent

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[3] *Id*. at 151.

[4] *Id*. at 152-158.

Supreme Court E-Library

was suspended from the practice of law for one month and said suspension was received by respondent on June 15, 2008.

However, despite of the subject June 27, 2009 Resolution on July 15, 2008 and despite knowledge of her suspension from the practice of law, the said resolution having been further posted in the website of the Supreme Court and is available in CD Asia's Lex Libris, respondent continued to practice law in wilful disobedience of the Supreme Court's suspension order in A.C. No. 7494.

In fact from June 27, 2008 until May 2009, respondent filed the following papers and pleadings as counsel in Civil Case No. 7617, to wit:

Comment to Motion for Voluntary Inhibition dated July 15, 2008.

Motion to Admit Answer which was undated but submitted on November 12, 2008.

An undated Comments/Opposition to the Petitioner's Formal Offer of Evidence in Support of the Application for Writ of Preliminary Mandatory Injunction which was received by petitioners' counsel on November 26, 2008.Motion to Admit Amended Motion for Reconsideration dated February 9, 2009 which was received by petitioners' counsel on February 12, 2009.

Motion for Reconsideration dated January 23, 2009.

Motion to File Position Paper dated April 13, 2009; and

Pre-Trial Brief for Respondents dated May 13, 2009.

Also in connection with complainant Casahilan's Petition for Certiorari with the Court of Appeals, respondent never withdrew her appearance. The same is true in the case of Alven Bernardo Andrade. Respondent never withdrew her appearance therein.

Likewise and notwithstanding such suspension, respondent continued to practice law and respondent clients in other cases before the four (4) branches of the Regional Trial Court in Daet, Camarines Norte. Supporting this truthful assertion are the following:

CERTIFICATION dated May 29, 2009 issued by Atty. Michael Angelo S. Rieo, Branch Clerk of Court, Branch 38, Regional Trial Court, Daet, Camarines Norte.

CERTIFICATION dated November 24, 2009 issued by Atty. Elaine Gay R. Belen, Branch Clerk of Court, Branch 39, Regional Trial Court, Daet, Camarines Norte.

Supreme Court E-Library

CERTIFICATION dated November 19, 2009 issued by Mr. Eddie E. Balonzo, Acting Clerk of Court, Branch 40, Regional Trial Court, Daet, Camarines Norte; and

CERTIFICATION dated November 5, 2009 issued by Mr. Chito B. Pacao, OIC/Legal Researcher II, Branch 41, Regional Trial Court, Daet, Camarines Norte.

And per the November 5, 2009 letter of Atty. Michael Mortimer G. Pajarillo, Chapter President, Integrated Bar of the Philippines, Camarines Norte Chapter, Daet, Camarines Norte, respondent "xxx Atty. Eva Paita-Moya has not complied with the order of the Supreme Court relative to her suspension from the practice of law from June 27, 2008 up to the present.[5]

Respondent's version, as stated in the Report,[6] is that she started serving the suspension order on 20 May 2009. This was also her position in her Manifestation and Motion to Suspend Proceedings[7] dated 30 September 2010. She likewise alleged therein that she had filed with the Supreme Court in December 2009 an Urgent Motion to Lift Order of Suspension with the Supreme Court, which was unresolved as of the date of her Manifestation.[8] Additionally, she argued that the resolution of the initial administrative case docketed as A.M. No. 7464 was material to her position in this particular case.[9]

The issue in this case falls solely on the question of whether Respondent engaged in the unauthorized practice of law, that is, the practice of law despite the clear language of this Court's suspension order.

The Report and Recommendation recommended that Respondent be found liable. We adopt the same, with modification.

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[5] *Id*. at 153-157.

[6] *Id*. at 155.

[7] *Id*. at 140-142.

[8] *Id*. at 140.

[9] *Id*. at 141.

Supreme Court E-Library

The suspension order was received by Respondent on July 15, 2008.[10] Despite this, she continued to practice law in various cases, as shown by the pleadings she filed and the certifications noted by the Report.[11] In fact, she continued receiving various fees for her services throughout the duration of her suspension.[12]

It is important to note that her defense consists of an admission that she was indeed suspended, and allegedly served her suspension.[13] She claimed that she never received the resolution that had allegedly suspended her.[14] By logical inference therefore, her sole defense is ignorance of the resolution that suspended her.

However, the records of this very Court belie her statements. Office of the Court Administrator Circular No. 51-2009 stated the following:

> For your information and guidance, quoted hereunder is the dispositive portion of the Resolution of the Third Division dated 27 June 2008, in Administrative Case No. 7494 entitled, "Wilson Cham vs. Atty. Eva Paita-Moya", to wit:
>
> > WHEREFORE, Atty. Eva Paita-Moya is found guilty of gross misconduct and hereby SUSPENDED for one month from the practice of law, **effective upon her receipt of this Decision.** She is warned that a repetition of the same or a similar act will be dealt with more severely.
>
> On 15 July 2008, **Atty. Moya received the said resolution as per Registry Return Receipt No. 2320.** (Emphases supplied)[15]

Moreover, the Office of the Bar Confidant issued a Certification dated 8 May 2009 that **the suspension of Atty. Paita-Moya in A.C. No. 7494 had not yet been lifted**.[16]

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[10] *Id*. at 65.

[11] *Id*. at 156-157.

[12] *Id*. at 96-138.

[13] *Id*. at 47.

[14] *Id*. at 43-44.

[15] OCA Circular No. 51-2009.

[16] *Rollo*, at 7.

Supreme Court E-Library

We had laid down guidelines in ***Maniago v. De Dios***,

IN LIGHT OF THE FOREGOING, it is hereby RESOLVED that the following guidelines be observed in the matter of the lifting of an order suspending a lawyer from the practice of law:

1) After a finding that respondent lawyer must be suspended from the practice of law, the Court shall render a decision imposing the penalty;

2) Unless the Court explicitly states that the decision is immediately executory upon receipt thereof, respondent has 15 days within which to file a motion for reconsideration thereof. The denial of said motion shall render the decision final and executory;

3) Upon the expiration of the period of suspension, respondent shall file a Sworn Statement with the Court, through the Office of the Bar Confidant, stating therein that he or she has desisted from the practice of law and has not appeared in any court during the period of his or her suspension;

4) Copies of the Sworn Statement shall be furnished to the Local Chapter of the IBP and to the Executive Judge of the courts where respondent has pending cases handled by him or her, and/or where he or she has appeared as counsel;

5) The Sworn Statement shall be considered as proof of respondents compliance with the order of suspension;

6) Any finding or report contrary to the statements made by the lawyer under oath shall be a ground for the imposition of a more severe punishment, or disbarment, as may be warranted.[17]

This case is not without precedent.[18] Previously, we had already stated the standard for discipline upon erring lawyers who continue practicing despite being suspended by the Court, *viz*:

Under Section 27, Rule 138 of the Rules of Court, willful disobedience to any lawful order of a superior court is a ground for disbarment or suspension from the practice of law:

SEC. 27. Disbarment or suspension of attorneys by Supreme Court; grounds therefor. — A member of the bar may be disbarred or suspended

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[17] A.C. No. 7472, 30 March 2010.

[18] *Feliciano v. Bautista-Lozada*, A.C. No. 7593, 11 March 2015.

Supreme Court E-Library

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 willful 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.

In *Molina v. Atty. Magat*, this court suspended further Atty. Ceferino R. Magat from the practice of law for six months for practicing his profession despite this court's previous order of suspension.

We impose the same penalty on Atty. Baliga for holding his position as Regional Director despite lack of authority to practice law.[19]

The Commissioner recommended the suspension of respondent from the active practice of law for six (6) months with stern warning that any similar infraction in the future would be dealt with more severely.[20] In light of this and the jurisprudence already cited, we adopt the recommendation.

WHEREFORE, premises considered, **ATTY. EVA PAITA-MOYA** is found **GUILTY** of violating Section 27, Rule 138 of the Rules of Court, and is hereby **SUSPENDED** from the practice of law for an additional period of six (6) months from her one (1) month suspension, totaling seven (7) months from service of this resolution, with a **WARNING** that a repetition of the same or similar offense will warrant a more severe penalty.

Let copies of this Decision be furnished all courts, the Office of the Bar Confidant and the Integrated Bar of the Philippines for their information and guidance. The Office of the Bar Confidant is **DIRECTED** to append a copy of this Decision to respondent's record as member of the Bar.

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[19] *Lingan v. Calubaquib*, A.C. No. 5377, 30 June 2014.

[20] *Rollo*, p. 158.

Supreme Court E-Library

Atty. Paita-Moya is **DIRECTED** to inform the Court of the date of her receipt of this Decision, to determine the reckoning point when her suspension shall take effect.

This Decision is immediately executory.

SO ORDERED.

Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Villarama, Jr., Perez, Mendoza, Perlas-Bernabe, and *Leonen, JJ.,* concur.

Carpio, Brion, Reyes, and *Jardeleza, JJ.,* on leave.

EN BANC

[A.M. No. CA-15-53-J. July 14, 2015]
(Formerly OCA I.P.I. No. 15-230-CA-J)

RE: COMPLAINT DATED JANUARY 28, 2015 OF CATHERINE DAMAYO, REPRESENTED BY HER MOTHER, VENIRANDA DAMAYO, AGAINST HON. MARILYN LAGURA-YAP, ASSOCIATE JUSTICE, COURT OF APPEALS-VISAYAS, CEBU CITY, CEBU.

SYLLABUS

1. **JUDICIAL ETHICS; JUDGES; RENDERING A SPURIOUS JUDGMENT, NOT A CASE OF; NOT EVERY ERROR THAT A JUDGE COMMITS IN THE PERFORMANCE OF HIS DUTIES RENDERS HIM LIABLE.—** It is well settled that in administrative proceedings, the burden of proof that respondents committed the acts complained of rests on the complainant. In the instant case, we find the allegations of spurious judgment and the failure to promulgate judgment to be bereft of factual or legal basis. It is not enough that