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THIRD DIVISION

[A.C. No. 5914. March 11, 2015]

SPOUSES ROGELIO AMATORIO and AIDA AMATORIO, *complainants, vs.* **ATTY. FRANCISCO DY YAP and ATTY. WHELMA F. SITON-YAP,** *respondents.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; MEMBERSHIP IN THE BAR IS BESTOWED UPON INDIVIDUALS WHO ARE LEARNED IN LAW AND KNOWN TO POSSESS GOOD MORAL CHARACTER, AND THEY ARE GUIDED BY THE CODE OF PROFESSIONAL RESPONSIBILITY IN THEIR DEPORTMENT.— [M]embership in the bar is a privilege burdened with conditions. It is bestowed upon individuals who are not only learned in law, but also known to possess good moral character. Lawyers should act and comport themselves with honesty and integrity in a manner beyond reproach, in order to promote the public's faith in the legal profession. The Code of Professional Responsibility was promulgated to guide the members of the bar by informing them of the deportment expected of them in leading both their professional and private lives. Primarily, it aims to protect the integrity and nobility of the legal profession, to breed honest and principled lawyers and prune the association of the unworthy.

2. ID.; ID.; SUSPENSION OR DISBARMENT; A CASE FOR SUSPENSION OR DISBARMENT MAY PROCEED REGARDLESS OF THE COMPLAINANT'S PARDON OR WITHDRAWAL FROM THE CASE FOR AS LONG AS THERE IS EVIDENCE TO SUPPORT ANY FINDING OF CULPABILITY; RATIONALE.— [A]ny misconduct on the part of the lawyer not only hurts the client's cause but is even more disparaging on the integrity of the legal profession itself. Thus, for tarnishing the reputation of the profession, a lawyer may still be disciplined notwithstanding the complainant's pardon or withdrawal from the case for as long as there is

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evidence to support any finding of culpability. A case for suspension or disbarment may proceed "regardless of interest or lack of interest of the complainants, if the facts proven so warrant." It follows that the withdrawal of the complainant from the case, or even the filing of an affidavit of desistance, does not conclude the administrative case against an erring lawyer. This is so because the misconduct of a lawyer is deemed a violation of his oath to keep sacred the integrity of the profession for which he must be disciplined. "The power to discipline lawyers who are officers of the court may not be cut short by compromise and withdrawal of the charges. This is as it should be, especially when we consider that the law profession and its exercise is one impressed with public interest. Proceedings to discipline erring members of the bar are not instituted to protect and promote the public good only but also to maintain the dignity of the profession by the weeding out of those who have proven themselves unworthy thereof."

3. ID.; ID.; CODE OF PROFESSIONAL RESPONSIBILITY; WHEN A LAWYER DELIBERATELY FAILS TO INFORM THE COURT OF AN OUT-OF-COURT SETTLEMENT, HE VIOLATES THE STANDARDS OF HONESTY PROVIDED FOR IN THE CODE; CASE AT BAR.— "[I]n administrative cases for disbarment or suspension against lawyers, the quantum of proof required is clearly preponderant evidence and the burden of proof rests upon the complainant." In the present case, it was clearly established that Francisco received ₱20,000.00 as initial payment from the complainants in compliance with the terms of their out-of-court settlement for the payment of the latter's outstanding obligations. The amount was duly received and acknowledged by Francisco, who drafted the same in a paper with the letterhead of his own law office, a fact he did not deny. While the respondents deny that they told the complainants not to attend the pre-trial of the case anymore and that they will be the one to inform the trial court of the settlement, they did not bring the said agreement to the attention of the court. Thus, the trial court, oblivious of the settlement of the parties, rendered a judgment by default against the complainants. The respondents even filed a motion for execution of the decision but still did not inform the trial court of the out-of-court settlement between them and the complainants. They deliberately failed to mention

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this supervening event to the trial court, hence, violating the standards of honesty provided for in the Code of Professional Responsibility x x x.

APPEARANCES OF COUNSEL

Castillo Laman Tan Pantaleon and San Jose Law Office for respondents.

R E S O L U T I O N

REYES, *J.*:

This pertains to the complaint for disbarment filed by Spouses Rogelio Amatorio and Aida Amatorio (Aida) (complainants) against Attys. Francisco Dy Yap (Francisco) and Whelma Siton-Yap (respondents) for violating Rules 1.01, 7.03, 10.01, 10.02 and 10.03 of the Code of Professional Responsibility.

In their complaint, the complainants alleged that the respondents employed deceit to obtain favorable judgments, specifically by failing to inform the trial court that there was already an out-of-court settlement between them and maliciously manifesting that their counsel, Atty. Justo Paras (Atty. Paras) was suspended from the practice of law.[1]

The complainants asseverated that they are clients of Atty. Paras in two collection cases, particularly, Civil Case No. 2000-319 and Civil Case No. 2000-321, which were filed against them by the respondents. In Civil Case No. 2000-319, respondents sued the complainants to compel them to pay their indebtedness of ₱18,000.00, which was evidenced by a promissory note. After they filed their answer to the complaint, however, the respondents filed a motion to strike out the same and to declare them in default on the ground that the said pleading was prepared by a lawyer suspended from the practice of law and lacked proper verification. The motion was however denied.[2]

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[1] *Rollo*, p. 421.

[2] *Id*.

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On the other hand, in Civil Case No. 2000-321, the respondents sued the complainants to collect the amount of ₱94,173.44. The answer filed by Atty. Paras was however stricken off the record for the reason that he was suspended from the practice of law at the time of its filing.[3]

Unable to find a lawyer to replace Atty. Paras, the complainants decided to seek an out-of-court settlement. On May 23, 2001, Aida went to the respondents' law office. She appealed for the respondents' consideration and asked that they be allowed to pay their obligations by way of installment. The parties agreed on the terms of payment and, on that same day, Aida tendered her first payment of ₱20,000.00, which was received and duly acknowledged by Francisco in a written document with the letterhead of Yap Law Office. When Aida asked the respondents if they should still attend the pre-trial conference scheduled on May 28, 2001 and June 18, 2001 in the civil cases filed against them, the latter told them they need not attend anymore as they will be moving for the dismissal of the cases. Relying on the respondents' assurance, the complainants did not attend the scheduled hearings. Subsequently, they were surprised to receive copies of the decisions of the trial court in the two civil cases filed by the respondents, declaring them in default for non-appearance in the pre-trial conference and ordering them to pay the amount of their indebtedness and damages. The decision however did not mention the out-of-court settlement between the parties. Nonetheless, the complainants continued tendering installment payments to the respondents upon the latter's assurance that they will disregard the decision of the trial court since they already had an out-of-court settlement before the rendition of said judgment. They were surprised to learn, however, that the respondents filed a motion for the issuance of a writ of execution in Civil Case No. 2000-319 and were in fact issued said writ.[4] This prompted them to seek legal advice to address their predicament. They went to Atty. Jose V. Carriaga who,

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[3] *Id*.

[4] *Id*. at 80-81.

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after learning of the factual milieu of their case, told them that they have a good ground to file a disbarment case against the respondents. He, however, declined to handle the case himself as he disclosed that his wife is a relative of the respondents. Instead, he referred the complainants to Atty. Paras, who had just resumed his practice of law after his suspension.[5]

As advised, the complainants went to Atty. Paras to engage his services as their counsel. Initially, Atty. Paras refused to handle their case as he revealed that the personal animosity between him and the respondents may invite unwelcome repercussions. Even then, the complainants insisted to retain his services as their counsel. Thus, Atty. Paras proceeded to file a disbarment case against the respondents with the Integrated Bar of the Philippines (IBP).[6]

As foretold by Atty. Paras, the complainants experienced unpleasant backlash which were allegedly instigated by the respondents who come from a very powerful and affluent clan. They received threats of physical harm and Aida's continued employment as a public school teacher was put in jeopardy. Also, suspicious-looking individuals were seen loitering around their house. When they refused to yield to the respondents' intimidation, the latter resorted to the filing of charges against them, to wit: (1) an administrative case against Aida for failure to pay the same debts subject of this case; and (2) a criminal case for perjury against the complainants. To alleviate their situation, they filed a Joint-Affidavit,[7] seeking the assistance of this Court to warn the respondents and to stop them from employing deplorable acts upon them.

In their Comment on the Complaint and Counter-Petition for Disbarment dated March 14, 2003, the respondents denied having resorted to deceitful means to obtain favorable judgments in Civil Case Nos. 2000-319 and 2000-321. They admitted that

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[5] *Id*. at 83.

[6] *Id*.

[7] *Id*. at 82-85.

they agreed to an out-of-court settlement, through the intercession of Rosa Yap Paras, estranged wife of Atty. Paras, but denied that the complainants ever tendered any installment payment. They claimed that Atty. Paras merely employed cajolery in order to entice the complainants to file the instant case to retaliate against them. They asseverated that Atty. Paras resented the fact that the respondents served as counsel for his former wife, who previously filed the administrative case for immorality, abandonment of family, and falsification and use of falsified documents which resulted to his suspension.[8]

On their counter-petition for disbarment, the respondents asserted that Atty. Paras clearly defied the authority of this Court when he represented the complainants and filed an answer on their behalf during the period of his suspension from the practice of law. They alleged that he appeared in several cases and filed numerous pleadings despite his suspension.[9]

After the parties submitted their respective position papers, the Investigating Commissioner of the IBP-Commission on Bar Discipline issued a Report and Recommendation[10] dated June 23, 2005, which pertinently states as follows:

> There is substantial evidence that Respondent Francisco Yap ha[s] deliberately neglected, at the very least, offered and/or pleaded inaccurate allegations/testimonies to purposely mislead or confuse the civil courts in Dumaguete City. Francisco Yap failed to controvert the existence and the authenticity of the Acknowledgment Receipt dated May 21, 2001 which bore his signature and written in a "Yap Law Office" letterhead. Such documentary evidence supports the theory of the Complainants that there was indeed an out-of-court settlement prior to the pre-trial hearings and that they were most likely assured that these cases would be dismissed. Their absence during the pre-trial hearings evidently resulted to decisions adverse to them. Moreover, the Motions for the Writ of Execution did not fail to mention the existence of partial payments and the prior

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[8] *Id.* at 422-423.

[9] *Id.* at 423-424.

[10] *Id.* at 420-437.

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agreement which, if disclosed, would have led the court not to issue such writs. Since Respondent Francisco Yap's signature appear in all the Acknowledgement Receipts and in all Motions filed in the civil courts, he alone should be penalized. On the other hand, Respondent Whelma Siton Yap should not be penalized in the absence of any evidence of her participation in such conduct. x x x.

All told, this Commissioner recommends that only Respondent Francisco Yap should be suspended from the practice of law for six (6) months. At the same time, the Counter Petition for Disbarment filed by herein Respondents against Atty. Justo Paras, which appears to be VERY meritorious, be given due course in another proceeding with utmost dispatch.[11]

Upon review of the report and recommendation of the Investigating Commissioner, the IBP Board of Governors issued Resolution No. XVII-2005-159[12] dated December 17, 2005, disposing thus:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, **with modification,** the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex "A", and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and for deliberately neglecting, offering inaccurate allegations to purposely mislead or confuse the courts, Atty. Francisco D. Yap is hereby **SUSPENDED** from the practice of law for three (3) months. Atty. Whelma F. Siton-Yap is exonerated in the absence of any evidence of her participation in such conduct; however Respondents are **Warned** for indirectly misleading the Commission.[13]

On March 27, 2006, the respondents filed a Motion for Reconsideration/Petition for Review.[14]

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[11] *Id*. at 436-437.

[12] *Id*. at 418-419.

[13] *Id*. at 418.

[14] *Id*. at 213-292.

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On August 9, 2007, the complainants filed a Manifestation,[15] terminating the services of Atty. Paras and/or Paras-Enojo and Associates as their counsel for the reason that they can no longer afford the services of a private counsel.

Surprisingly, on the same day, the complainants executed a Judicial Affidavit,[16] disclaiming knowledge and participation in the preparation of the complaint and the pleadings filed on their behalf by Atty. Paras in connection with the disbarment case against the respondents. They claimed that they merely signed the pleadings but the contents thereof were not explained to them in a dialect which they understood. They likewise expressed lack of intention to file a disbarment case against the respondents and that, on the contrary, they were very much willing to settle and pay their indebtedness to them. Further, they asserted that it was not the respondents, but Atty. Paras who instructed them not to attend the pre-trial conference of the cases which eventually resulted to a judgment by default against them. They claimed that Atty. Paras told them that he will be the one to attend the pre-trial conference to settle matters with the respondents and the court but he did not show up on the scheduled date. They also asseverated that most of the statements contained in the complaint for disbarment were false and that they wished to withdraw the said complaint.

On May 14, 2011, the IBP Board of Governors issued Resolution No. XIX-2011-172,[17] which reads:

> RESOLVED to DENY Respondent's Motion for Reconsideration there being no cogent reason to reverse the findings of the Commission and it being a mere reiteration of the matters which had already been threshed out and taken into consideration. Thus, Resolution No. XVII-2005-159 dated 17 December 2005 is hereby **AFFIRMED**.[18]

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[15] *Id*. at 53-54.

[16] *Id*. at 57-65.

[17] *Id*. at 416-417.

[18] *Id*. at 416.

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On August 18, 2011, the respondents filed a motion for reconsideration, claiming that the admission of the complainants in the Judicial Affidavit dated August 9, 2007 proved that the disbarment case filed against them was just fabricated by Atty. Paras. They pointed out the complainants' statement that they were just made to sign the complaint for disbarment by Atty. Paras to retaliate against them for having filed a case against him for falsification of documents which sent him to prison for some time.

On August 18, 2011, the complainants sent a letter[19] to the IBP, expressing disappointment over the fact that the IBP Board of Governors did not dismiss the disbarment case against Francisco. The letter pertinently stated:

> We are very concerned and saddened by the fact that the disbarment case against ATTY. FRANCISCO DY YAP was **NOT DISMISSED. The reason is that we have submitted our JUDICIAL AFFIDAVIT relating the facts and circumstances wherein the said disbarment complaint was prepared by our former legal counsel, ATTY. JUSTO J. PARAS consisting of fabrications and not on facts. It was upon the machination and instigation of ATTY. JUSTO PARAS, that the simple collection case of ₱94,000.00 more or less, became a multifaceted case in several forums**.[20] (Emphasis in the original)

The instant case is now referred to this Court for final action.

The Court notes that on September 16, 2011, the complainants filed a Motion to Admit Judicial Affidavit with Motion to Dismiss and/or Withdraw Complaint,[21] reiterating their claim that the filing of the disbarment was a product of Atty. Paras' maneuverings and that the allegations against the respondents stated therein were false.

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[19] *Id*. at 438-439.

[20] *Id*. at 438.

[21] *Id*. at 898-906.

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After a careful examination of the facts of this case, the Court finds no compelling reason to deviate from the resolution of the IBP Board of Governors.

Notably, the respondents seek a reconsideration of the resolutions of the IBP Board of Governors primarily on the basis of the Judicial Affidavit dated August 9, 2007, wherein the complainants cleared them of the charges of misconduct and turned the blame on their own counsel, Atty. Paras, for allegedly having made up the allegations in the disbarment complaint. When the IBP Board of Governors sustained the imposition of suspension to Francisco, the complainants themselves submitted a motion to admit the said judicial affidavit to this Court, together with a motion to dismiss and withdraw complaint.

The question now is whether the statements of the complainants, specifically contesting the truthfulness of the allegations hurled against the respondents in their own complaint for disbarment necessarily results to Francisco's absolution. The answer is in the negative.

It bears stressing that membership in the bar is a privilege burdened with conditions. It is bestowed upon individuals who are not only learned in law, but also known to possess good moral character. Lawyers should act and comport themselves with honesty and integrity in a manner beyond reproach, in order to promote the public's faith in the legal profession.[22]

The Code of Professional Responsibility was promulgated to guide the members of the bar by informing them of the deportment expected of them in leading both their professional and private lives. Primarily, it aims to protect the integrity and nobility of the legal profession, to breed honest and principled lawyers and prune the association of the unworthy.

It is for the foregoing reason that the Court cannot simply yield to complainants' change of heart by refuting their own

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[22] *San Jose Homeowners Association, Inc. v. Atty. Romanillos*, 499 Phil. 99, 107 (2005).

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statements against the respondents and praying that the complaint for disbarment they filed be dismissed. It bears emphasizing that any misconduct on the part of the lawyer not only hurts the client's cause but is even more disparaging on the integrity of the legal profession itself. Thus, for tarnishing the reputation of the profession, a lawyer may still be disciplined notwithstanding the complainant's pardon or withdrawal from the case for as long as there is evidence to support any finding of culpability. A case for suspension or disbarment may proceed "regardless of interest or lack of interest of the complainants, if the facts proven so warrant."[23] It follows that the withdrawal of the complainant from the case, or even the filing of an affidavit of desistance, does not conclude the administrative case against an erring lawyer.

This is so because the misconduct of a lawyer is deemed a violation of his oath to keep sacred the integrity of the profession for which he must be disciplined. "The power to discipline lawyers who are officers of the court may not be cut short by compromise and withdrawal of the charges. This is as it should be, especially when we consider that the law profession and its exercise is one impressed with public interest. Proceedings to discipline erring members of the bar are not instituted to protect and promote the public good only but also to maintain the dignity of the profession by the weeding out of those who have proven themselves unworthy thereof."[24]

Therefore, in the instant case, the Court cannot just set aside the finding of culpability against the respondents merely because the complainants have decided to forgive them or settle matters amicably after the case was completely evaluated and reviewed by the IBP. The complainants' forgiveness or even withdrawal from the case does not *ipso facto* obliterate the misconduct committed by Francisco. To begin with, it is already too late in the day for the complainants to withdraw the disbarment case considering that they had already presented and supported their

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[23] *Go v. Candoy*, 128 Phil. 461, 465 (1967).

[24] *Munar v. Flores*, 207 Phil. 390, 393 (1983).

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claims with convincing and credible evidence, and the IBP has promulgated a resolution on the basis thereof.

To be clear, "[i]n administrative cases for disbarment or suspension against lawyers, the quantum of proof required is clearly preponderant evidence and the burden of proof rests upon the complainant."[25] In the present case, it was clearly established that Francisco received ₱20,000.00 as initial payment from the complainants in compliance with the terms of their out-of-court settlement for the payment of the latter's outstanding obligations. The amount was duly received and acknowledged by Francisco, who drafted the same in a paper with the letterhead of his own law office, a fact he did not deny. While the respondents deny that they told the complainants not to attend the pre-trial of the case anymore and that they will be the one to inform the trial court of the settlement, they did not bring the said agreement to the attention of the court. Thus, the trial court, oblivious of the settlement of the parties, rendered a judgment by default against the complainants. The respondents even filed a motion for execution of the decision but still did not inform the trial court of the out-of-court settlement between them and the complainants. They deliberately failed to mention this supervening event to the trial court, hence, violating the standards of honesty provided for in the Code of Professional Responsibility, which states:

CANON 1 – A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and for legal processes.

Rule 1.01 – A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

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

Rule 10.01 – 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.

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[25] *Cruz v. Atty. Centron*, 484 Phil. 671, 675 (2004).

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The complainants' belated claim that the respondents were faultless and that the allegations stated in the disbarment complaint were just fabricated by their former counsel cannot stand against the clear and preponderant evidence they earlier presented. It is inexplicable how the complainants could now claim that the respondents were blameless when the records tell otherwise. That they were simply duped by Atty. Paras into signing the numerous pleadings he filed on their behalf is hardly believable considering that Aida is well-lettered, being a public school teacher. They also do not claim that they were prevented from reading the contents of the pleadings or that their signatures were simply forged. At any rate, while it may be true that Atty. Paras fabricated some of the facts stated in the disbarment complaint, these matters are trivial and do not relate to the facts material to the charge of misconduct against Francisco. What clearly appears is that the facts material to the violation committed by Francisco are well-established notwithstanding Atty. Paras' supposed fabrication of some insignificant particulars.

WHEREFORE, for deliberately misleading the Court, Atty. Francisco Dy Yap is hereby **SUSPENDED** from the practice of law for a period of three (3) months effective upon receipt of this Resolution, with a **STERN WARNING** that a repetition of the same or similar act in the future shall be dealt with severely.

For lack of evidence of her participation in the misconduct, Atty. Whelma F. Siton-Yap is hereby **EXONERATED** of the charges against her.

Let copies of this Resolution be furnished to the Integrated Bar of the Philippines and the Office of the Court Administrator which shall circulate the same in all courts in the country, and spread upon the personal records of the respondent lawyer in the Office of the Bar Confidant.

SO ORDERED.

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