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THIRD DIVISION

[A.C. No. 5165. December 14, 2001]

VICENTE DELOS SANTOS, ROBERTO DELOS SANTOS, PACIFICO DELOS SANTOS, CORAZON DELOS SANTOS, CONSTANCIA DELOS SANTOS, ELEODORO PRADO, NORMA DELOS SANTOS, WILFREDO PRADO, LUDOVICO DELOS SANTOS, ALICIA DELOS SANTOS, RONALDO DEGRAS, DEMOCRITO DELOS SANTOS, FELICISIMA DELOS SANTOS, TEODULO ARCIBAL, ADELA S. CASTRO, LUBERATO LAKANDULA, FELISA S. CASTRO, PAQUITO CASIDSID, NELLY SUALOG, LEONARDO YANKY, REMEDIOS C. SUALOG, MARIA C. SUALOG, WINIFREDO C. SUALOG, VICENTE C. SUALOG, FELOGENIA C. SUALOG, PATRICIO C. SUALOG, BUENAVENTURA C. SUALOG, ROMEO C. SUALOG, CONCEPCION ANDRES, AGNES LEVI A. SUALOG, DIONESIO C. SERRANO, ZENAIDA C. SERRANO, ABUNDIO C. SERRANO, VIOLETA C. SERRANO, ROMEO C. SERRANO, EFREN C. SERRANO, THELMA CASTRO-SALIBIO, JESUS S. FERNANDO, RODRIGO DELOS SANTOS, CLARITA DELOS SANTOS, DANILO TUMALA, ERLINDA TUMALA, EDGARDO TUMALA, DOMINGO TUMALA, MARIO TUMALA, RONALD TUMALA, FERDINAND TUMALA, ANASTACIA DELOS SANTOS, FRANCISCO TUMALA, ARSENIO DELOS SANTOS, JR., VICTORINO DELOS SANTOS, ERLINDA DELOS SANTOS, NATIVIDAD DELOS SANTOS, LITO PRADO, HERMINIGILDO DELOS SANTOS, and PETER DELOS SANTOS, *complainants, vs.* **ATTYS. ROMEO R. ROBISO and NAPOLEON M. VICTORIANO,** *respondents.*

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SYNOPSIS

Complaint for disbarment was filed against Atty. Romeo R. Romero and Atty. Napoleon Victoriano. It alleged that respondents committed malpractice, gross misconduct, dereliction of duty and acts gravely prejudicial to the interest of complainants. After the respondents filed their respective answers, the Court referred this case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation within ninety days from notice. Subsequently, the IBP recommended the dismissal of the case for lack of merit. The Court noted the resolution of the IBP and it considered the case closed and terminated. Complainants filed the instant motion for reconsideration by alleging that the recommendation of the IBP was issued without conducting any hearing on the case.

A review of the records of the case would indeed reflect that no hearing was conducted by the IBP, and that the recommendation was solely based on the pleadings filed by the parties. The Court ruled that in complaints for disbarment, a formal investigation is a mandatory requirement except in such extreme situations as when respondent fails to appear at the hearing despite reasonable notice. Thus, the instant administrative case was remanded to the Integrated Bar of the Philippines for further proceedings.

SYLLABUS

1. LEGAL AND JUDICIAL ETHICS; GUIDELINES IN DISBARMENT CASES. — The Court, in *Felicidad L. Cottam vs. Atty. Estrella Laysa and Jesusimo Baldomar vs. Atty. Justo Paras*, has given relevant guidelines in disbarment cases; thus: "Complaints against lawyers for misconduct are normally addressed to the Court. If, at the outset, the Court finds a complaint to be clearly wanting in merit, it outrightly dismisses the case. If, however, the Court deems it necessary that further inquiry should be made, such as when the matter could not be resolved by merely evaluating the pleadings submitted, a referral is made to the IBP for a formal investigation of the case during which the parties are accorded an opportunity to be heard. An *ex parte*

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investigation may only be conducted when respondent fails to appear despite reasonable notice.

2. ID.; ID.; FORMAL HEARING IS A MANDATORY REQUIREMENT; NOT COMPLIED IN CASE AT BAR. — The above guidelines were evidently missed by the IBP in proceeding with the administrative case. Considering the serious nature of the charges against respondents, it should have behooved the IBP to conduct a formal hearing of the case and only thereafter could its decision or recommendation, as the case may so be, be handed down. In complaints for disbarment, a formal investigation is a mandatory requirement except in such extreme situations as when respondent fails to appear at the hearing despite reasonable notice.

APPEARANCES OF COUNSEL

Edilberto B. Cosca for complainants.

RESOLUTION

VITUG, *J.*:

A complaint for disbarment charges Atty. Romeo R. Robiso and Atty. Napoleon Victoriano with malpractice, gross misconduct, dereliction of duty, and acts gravely prejudicial to the interest of complainants.

Complainants were the plaintiffs-appellants in a case filed before the Court of Appeals, docketed CA-G.R. CV No. 54136, entitled *"Vicente delos Santos, et al., plaintiffs-appellees, vs. Fred Elizalde, et al., defendants-appellants;* Jesus delos Santos and Rosita Flores, first set intervenors; Gloria Martin, *et al.*, second set intervenors." The appeal was consolidated with CA-G.R. SP No. 48475, entitled "*Florencio D. Gonzales, petitioner, vs. Hon. Niovady M. Marin, et al., respondents*," for the annulment of judgment in Civil Case No. 3683. On 11 May 1999, the appellate court rendered its decision; it held:

"WHEREFORE: 1) the appeal by plaintiffs-appellants, defendants-appellants, and the second set of intervenors are hereby DISMISSED,

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and WITHDRAWN as prayed for; and 2) the petition for annulment of judgment is DENIED DUE COURSE and is ordered DISMISSED."

The decision of the Court of Appeals was based on the "Joint Manifestation and Motion" filed by defendant-appellant Fred Elizalde and the first set intervenors Jesus de los Santos and Rosita Flores, stating that, on 27 May 1999, the parties entered into an agreement, said to be an amicable settlement entered into by and between Fred Elizalde, as the first party, and Jesus delos Santos and Rosita Flores, represented by Atty. Romeo Robiso, as the second party. Instead of filing an appellant's brief, an *ex-parte* motion to withdraw the appeal was filed by Atty. Napoleon M. Victoriano, counsel of record of plaintiffs-appellants (herein complainants), on the basis of the compromise agreement.

Complainants would now aver that their signatures on the 27th May 1999 agreement were forged, presumably through the malicious and devious scheme perpetrated by respondent Atty. Romeo R. Robiso. In turn, Atty. Victoriano was faulted for his failure to file for the complainants an appellants' brief before the Court of Appeals, who, instead, filed an *ex parte* motion to withdraw the appeal predicating this move on the 27th May 1999 agreement.

In his comment, Atty. Napoleon Victoriano explained that the instant administrative case was indeed an offshoot of Civil Case No. 3683 filed by complainants against Fred Elizalde before the Regional Trial Court of Kalibo, Aklan. Complainants were originally represented by Attorneys Anastacio Rufon, Manuel Patriarca, and Reynaldo Santos. When the three attorneys later withdrew as counsel for complainants, Atty. Victoriano was engaged in Civil Case No. 3683. The case was subsequently appealed to the Court of Appeals (C.A. G.R. CV No. 54136). Atty. Victoriano received, on 15 June 1998, a "Notice to File Appellants' Brief" from the Court of Appeals. Complainants, however, furnished him with a copy of the agreement which appeared to have been duly signed by them. In accordance with the terms and conditions of the agreement, he then filed an *ex parte* motion to withdraw the appeal.

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Atty. Robiso, in his case, denied the accusations of complainants. He contended that the agreement was prepared and acknowledged before Atty. Edgar Calizo, a notary public in Boracay Island. Noting that Atty. Victoriano, in his comment, stated that the complainants furnished him with a copy of the agreement, Atty. Robiso called attention to the fact that complainants, if indeed their signatures were forged, failed to file any complaint against the notary public.

The Court, in its resolution of *07 June 2000*, referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation within ninety days from notice.

In a letter, dated 02 April 2001, Atty. Victor C. Fernandez, IBP's Director of Bar Discipline, submitted to the Court (1) a notice and copy of the decision of the IBP and (2) the records of the case consisting of two volumes consisting, respectively, of 176 and 21 pages. The Notice of Resolution of the Board of Governors, adopting the recommendation of Commissioner Milagros V. San Juan, read:

"RESOLUTION NO. XIV-2001-78
Adm. Case No. 5165
Vicente Delos Santos, et al. vs.
Atty. Romeo R. Robiso and
Atty. Napoleon M. Victoriano

"RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution/Decision as Annex 'A'; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, the case against Respondents is DISMISSED for lack of merit."

The Court, in its minute resolution of 11 July 2001, noted the resolution of the IBP, and thereby considered the case closed and terminated. A motion for reconsideration was filed by complainants, alleging that the recommendation of the IBP was issued without conducting any hearing on the case. A review

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of the records of the case would indeed reflect that no hearing was conducted by the IBP, and that the recommendation was solely based on the pleadings, heretofore recited, filed by the parties.

The Court, in *Felicidad L. Cottam vs. Atty. Estrella Laysa*[1] *and Jesusimo Baldomar vs. Atty. Justo Paras*,[2] has given relevant guidelines in disbarment cases; thus:

"Complaints against lawyers for misconduct are normally addressed to the Court. If, at the outset, the Court finds a complaint to be clearly wanting in merit, it outrightly dismisses the case. If, however, the Court deems it necessary that further inquiry should be made, such as when the matter could not be resolved by merely evaluating the pleadings submitted, a referral is made to the IBP for a formal investigation of the case during which the parties are accorded an opportunity to be heard. An *ex parte* investigation may only be conducted when respondent fails to appear despite reasonable notice. Hereunder are some of the pertinent provisions of Rule 139-B of the Rules of Court on this matter; *viz*:

"'SEC. 3. *Duties of the National Grievance Investigator.*— The National Grievance Investigators shall investigate all complaints against members of the Integrated Bar referred to them by the IBP Board of Governors.

'x x x x x x x x x

'SEC. 5. *Service or dismissal.* — If the complaint appears to be meritorious, the Investigator shall direct that a copy thereof be served upon the respondent, requiring him to answer the same within fifteen (15) days from the date of service. If the complaint does not merit action, or if the answer shows to the satisfaction of the Investigator that the complaint is not meritorious, the same may be dismissed by the Board of Governors upon his recommendation. A copy of the resolution of dismissal shall be furnished the complainant and the Supreme Court which may review the case *motu proprio* or upon timely appeal of the complainant filed within 15 days from notice of the dismissal of the complaint.

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[1] 326 SCRA 614.

[2] Adm. Case No. 4980, 15 December 2000.

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'No investigation shall be interrupted or terminated by reason of the desistance, settlement, compromise, restitution, withdrawal of the charges, or failure of the complainant to prosecute the same.

'x x x x x x x x x.

'SEC. 8. *Investigation.* — Upon joinder of issues or upon failure of the respondent to answer, the Investigator shall, with deliberate speed, proceed with the investigation of the case. He shall have the power to issue subpoenas and administer oaths. The respondent shall be given full opportunity to defend himself, to present witnesses on his behalf and be heard by himself and counsel. However, if upon reasonable notice, the respondent fails to appear, the investigation shall proceed *ex parte*.

'The Investigator shall terminate the investigation within three (3) months from the date of its commencement, unless extended for good cause by the Board of Governors upon prior application.

'Willful failure to refusal to obey a subpoena or any other lawful order issued by the Investigator shall be dealt with as for indirect contempt of Court. The corresponding charge shall be filed by the Investigator before the IBP Board of Governors which shall require the alleged contemnor to show cause within ten (10) days from notice. The IBP Board of Governors may thereafter conduct hearings, if necessary, in accordance with the procedure set forth in this Rule for hearings before the Investigator. Such hearing shall as far as practicable be terminated within fifteen (15) days from its commencement. Thereafter, the IBP Board of Governors shall within a like period of fifteen (15) days issue a resolution setting forth its findings and recommendations, which shall forthwith be transmitted to the Supreme Court for final action and if warranted, the imposition of penalty.'

"The procedures outlined by the Rules are meant to ensure that the innocents are spared from wrongful condemnation and that only the guilty are meted their just due. Obviously, these requirements cannot be taken lightly."

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The above guidelines were evidently missed by the IBP in proceeding with the administrative case. Considering the serious nature of the charges against respondents, it should have behooved the IBP to conduct a formal hearing of the case and only thereafter could its decision or recommendation, as the case may so be, be handed down.

In complaints for disbarment, a formal investigation is a mandatory requirement except in such extreme situations as when respondent fails to appear at the hearing despite reasonable notice.

WHEREFORE, the instant administrative case is REMANDED to the Integrated Bar of the Philippines for further proceedings, and it is directed to act on this referral with dispatch.

SO ORDERED.

Melo (Chairman), Panganiban, Sandoval-Gutierrez, and *Carpio, JJ.,* concur.

FIRST DIVISION

[A.M. No. RTJ-99-1453. December 14, 2001]

FR. MICHAEL SINNOTT, ERLINDA PEDRANO PINGKIAN, ROSITA PEDRANO-LOPEZ, ALFREDO PEDRANO, ANTONIO PEDRANO, CARINO PEDRANO, CORAZON MENDOZA, VIRGINIA BALING-PESTAÑAS, *complainants, vs.* **JUDGE RECAREDO P. BARTE, Regional Trial Court, Branch 29, Zamboanga del Sur,** *respondent.*

SYNOPSIS

An administrative complaint for bias and partiality was filed against Judge Recaredo P. Barte for the acquittal of Nenito Gadonan, an accused in two murder cases tried in his *sala*.