

## **ELPIDIO SY, PRESIDENT, SYSTEMS REALTY DEVELOPMENT CORPORATION, COMPLAINANT, VS. EDGAR ESPONILLA, LEGAL RESEARCHER AND OFFICER-IN-CHARGE, AND JENNIFER DELA CRUZ-BUENDIA, CLERK OF...**

*A.M. No. P-06-2261 [Formerly OCA IPI No. 04-1905-P]. December 11, 2013*

Ponente: VILLARAMA, JR., J.

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### **VILLARAMA, JR., J.:**

This case is one among many where the irregularities complained of are evident and blatant yet its resolution has been protracted for years. While this Court has already ruled on the liability of the respondents in its October 30, 2006 Decision,[1] it directed another administrative investigation to search for the “missing link” which – if found – would have established the culpability of the perpetrator of these irregularities.

On March 30, 2004, complainant Elpidio Sy (Sy), President of Systems Realty Development Corporation, filed a verified Complaint[2] charging respondent Edgar Esponilla, Legal Researcher and then Officer-In-Charge of Branch 54 of the Regional Trial Court of Manila (Branch 54), and Atty. Jennifer Dela Cruz-Buendia (Atty. Dela Cruz-Buendia), Clerk of Court and Ex-officio Sheriff of the Regional Trial Court of Manila, with Gross Misconduct, Negligence and Dishonesty. The complaint was filed in connection with the withdrawal of deposits for monthly rentals deposited with Branch 54 in Civil Case No. 90-55003 entitled Maria Gagarin, et al. v. Bank of the Philippine Islands and Systems Realty Development Corporation.

Complainant had previously filed an ejectment case with Branch 1 of the Metropolitan Trial Court of Manila against Jaime Ang Tiao and Maria Gagarin who were eventually ejected from the property. On appeal, the case was assigned to Branch 32 of the Regional Trial Court of Manila (Branch 32) where supersedeas bond and monthly rentals covering the period from September 30, 1994 to January 3, 1997 were deposited. Simultaneously, Ang Tiao and Gagarin filed with Branch 54 a case, docketed as Civil Case No. 90-55003, contesting the validity of a deed of sale executed between Systems Realty Development Corporation and BPL.[3] The plaintiffs deposited with Branch 54 the sum of P264,000.00 to cover rental deposits from June 30, 1989 to August 5, 1994.

Upon a purported Ex-Parte Motion to Withdraw Rental Deposits (Ex-Parte Motion) in Civil Case No. 90-55003 filed by Atty. Walfredo Bayhon (Atty. Bayhon), counsel for plaintiffs Ang Tiao and Gagarin, the late Judge Hermogenes R. Liwag (Judge Liwag) issued the subject Order dated November 11, 1994, allowing the withdrawal of the deposits amounting to P260,000.00, viz.:

Finding the Ex-Parte Motion to Withdraw Rental Deposits filed by plaintiffs, thru counsel, to be well-taken, the same is hereby GRANTED, and the Clerk of Court, or her duly authorized representative, is hereby ordered to release to plaintiffs, or their duly authorized representative, the deposits made by such parties in the concept of rentals from May, 1989 to August, 1994 in the estimated aggregate sum of P260,000.00.

It is well to emphasize here that such deposits were made in the concept of monthly rentals for the plaintiffs’ occupancy of the premises in controversy, here and in the ejectment suit now on appeal with Branch 32 of this

same Court. It would appear, however, from the attachments to the Motion to Withdraw Rental Deposits that sufficient supersedeas bond was already posted in that appealed ejectment bond case by the plaintiffs hereto, defendants therein, in the total sum of P260,000.00. Surely, the rental deposits made in this case become superfluous and serve no legal purpose. It is actually duplicitous and its non-release would actually prejudice the plaintiffs.[4]

Judge Liwag was then the Pairing Judge of Branch 54 where Civil Case No. 90-55003 was docketed and the questioned Order was issued. He was likewise then the Presiding Judge of Branch 55 where, as the investigation would later show, Atty. Bayhon filed the Ex-Parte Motion. The assailed Order was also typed by an employee of Branch 55. Based on this Order, Ang Tiao was able to withdraw P256,000.00 from the Office of the Clerk of Court of the Regional Trial Court of Manila as evidenced by a disbursement voucher[5] dated November 14, 1994 certified by respondent Atty. Dela Cruz-Buendia and approved by then Acting Court Cashier Corazon L. Guanlao.

Complainant alleged that the withdrawal of the rental deposits was irregular because the claim in the Ex-Parte Motion to Withdraw Rental Deposits that the amount withdrawn from Branch 54 was superfluous and duplicitous is false. He asserted that Atty. Bayhon falsely alleged that there was already a sufficient supersedeas bond posted with Branch 32 to justify the withdrawal of the rental deposits made in Branch 54.[6] Complainant pointed out that there could have been no such duplication because the deposits made with Branch 54 covered the period from June 30, 1989 to August 5, 1994, while those made in Branch 32 were for the period covering September 30, 1994 to January 3, 1997.[7] Complainant thus concluded that when Judge Liwag granted the Ex-Parte Motion, he did not first ascertain the veracity of the allegations therein.[8] Complainant explained that he could not have objected to the false allegations made by Atty. Bayhon because he was not furnished a copy of the Ex-Parte Motion and the same was never set for hearing.[9]

It is of material significance in the case at bar that the Ex-Parte Motion does not appear anywhere in the records of Branch 54 on Civil Case No. 90-55003, and the fact that these documents were not attached to the case folio were discovered only when the records of the case were elevated to the Court of Appeals.[10]

Complainant faulted respondent Dela Cruz-Buendia, who was then the Assistant Clerk of Court for being negligent and conniving with the plaintiffs in the said civil case when she allowed and facilitated the release of the deposits without first verifying the authenticity of the Ex-Parte Motion and Order.[11] Complainant also charged respondent Esponilla with gross negligence for failing to safeguard vital case records and connivance with the plaintiffs in the same civil case.[12]

Respondent Dela Cruz-Buendia denied the charges against her and asserted that the functions of a clerk of court are purely ministerial in nature. As such, a clerk of court does not possess the discretion to follow or not to follow orders of the court.[13] Respondent Esponilla, on the other hand, prayed that the complaint against him be dismissed. He alleged that he was not the Officer-In-Charge of Branch 54 when the Order granting the Ex-Parte Motion was allegedly issued by Judge Liwag on November 11, 1994. Esponilla was designated as Officer-In-Charge only in March 1995.[14]

On November 9, 2004, the Office of the Court Administrator (OCA) referred the instant complaint to the Executive Judge of the Regional Trial Court of Manila for investigation, report and recommendation.[15] In a Report and Recommendation[16] dated February 1, 2006, then Executive Judge Antonio M. Eugenio, Jr. submitted the following findings:

Respondent Edgar Esponilla cannot be faulted for any of the acts complained of as he was appointed officer-in-charge of Branch 54 only in March 1995 and the questioned order was issued by Pairing Judge Hermogenes Liwag on November 11, 1994. Nor did he have a hand in the preparation and release of the check to the plaintiffs on November 14, 1994 or sometime thereafter.

x x x x

As to respondent Clerk of Court, we likewise find her explanations meritorious. In the instant case, the duty of the Clerk of Court and/or respondent Buendia x x x is ministerial.

Upon receipt of an order from a court, the Clerk of Court's duty is to make sure that the order is complied with. x x x For a Clerk of Court to question a ruling or order of a judge is an invitation for contempt.

x x x x

The pivotal issue that should be addressed is why Atty. Walfredo Bayhon filed the motion in the first place and why then Pairing Judge Hermogenes Liwag favorably acted on it without looking into the truth of the allegation of "duplicity and superfluity."

x x x x

Accordingly, it is respectfully submitted that the administrative complaint filed against respondents Edgar Esponilla and Jennifer de la Cruz[-]Buendia be dismissed for lack of merit.

It is further recommended that Atty. Walfredo Bayhon be asked to explain the circumstances behind his filing of the Ex-Parte Motion and to provide the Supreme Court with a true copy of the motion.[17]

In a Memorandum[18] dated June 5, 2006, the OCA submitted its evaluation and recommendation adopting the findings and recommendation of Executive Judge Eugenio, as follows:

RECOMMENDATION: In view of the foregoing discussions, it is respectfully submitted that the administrative complaint filed against respondents Edgar Esponilla and Atty. Jennifer dela Cruz-Buendia be DISMISSED for lack of merit.

Consequently, it is further recommended that Atty. Walfredo Bayhon be asked to EXPLAIN the circumstances behind his filing of the Ex-Parte Motion and to provide the Court with a true copy of the motion.[19]

In a Decision[20] dated October 30, 2006, this Court dismissed the administrative case against respondent Esponilla for lack of merit. The Court ruled that Esponilla – not being the Officer-In-Charge when the subject documents were allegedly processed with Branch 54 – cannot be faulted for the missing documents in the folio of Civil Case No. 90-55003.[21] The Court also did not find proof that Esponilla participated in the preparation and release of the check to the plaintiffs.[22] For lack of evidence, the Court was not convinced that Esponilla connived with either the plaintiffs in the civil case or with the other respondents to perpetuate fraud against the complainant.[23]

Respondent Dela Cruz-Buendia was found guilty of simple negligence in the performance of her duties and was fined in the amount of One Thousand Pesos (P1,000.00), with a warning that a repetition of the same or similar infraction will be dealt with more severely.[24] Atty. Bayhon, for his part, was ordered to explain within ten (10) days from receipt of the Decision the circumstances behind the filing of the Ex-Parte Motion and to provide the Court with a true copy of the Motion.[25] The Court required Atty. Bayhon's explanation in order to shed light on the circumstances leading to the issuance of the November 11, 1994 Order and the release of the rental deposits.[26]

The Court, in the said Decision, stated that the duties[27] and functions of clerks of court as officers of the law are generally administrative in nature and do not involve the discretion on the use of judicial powers.[28] It ruled that while respondent Dela Cruz-Buendia's duties as then clerk of court were purely ministerial, "ordinary prudence [would have called] for her to [have] at least [verified] the authenticity and origin of the alleged Order of Judge Liwag because from the copies on record, we note that the same does not bear the seal of the Court nor the

standard certification by the branch clerk of court. She should have been vigilant considering that the Order dealt with withdrawal of deposits.”[29]

The Court further noted the finding of the OCA that per the investigation of Judge Enrico A. Lanzanas, “the purported Order of Judge Liwag was actually prepared in Branch 55 by one Baby Manalastas.”[30] Since this finding does not fully explain why the said Order and the Ex-Parte Motion were not filed in the case folio of Civil Case No. 90-55003, the OCA was directed to conduct an investigation against the then clerks of court of Branches 54 and 55 during the period material to this case in order to explain the circumstances behind their improper management of court records and documents.[31]

In a Motion for Reconsideration[32] dated December 28, 2006, respondent Dela-Cruz-Buendia averred that she should not be found guilty of simple negligence. She argued that her delegated duty in relation to the withdrawal of the rental deposits – the physical preparation of the checks issued by the Office of the Clerk of Court – was ministerial and she had no choice but to prepare the subject check based on the Order lest she be cited for contempt. She stated that she did not have to verify the authenticity of the Order because it is presumed to have been regularly issued. Besides, she argued that the Order submitted to the Office of the Clerk of Court “was a duplicate original copy, appeared to be authentic on its face, showed no palpable nor patent, no definite nor certain defects, duly signed by the Honorable Judge Hermogenes Liwag, counterchecked by the subordinate personnel involved in the preparation of vouchers, namely: Corazon L. Guanlao, Court Cashier and Rosa S. Rayo.”[33] She allegedly signed and issued the check after the voucher was prepared and signed by the Acting Court Cashier and Clerk-in-Charge; the attachments, including the duplicate original copy of the Order, were attached to the voucher. With a “duplicate original copy” of the Order, respondent Dela Cruz-Buendia argued that there was no need to further require a “certified true copy.”

The Court, in a Resolution[34] dated January 31, 2007, resolved to deny the motion with finality as no substantial matters were raised to warrant a reconsideration thereof. Respondent Dela Cruz-Buendia filed a subsequent Supplemental Motion for Reconsideration[35] which was Noted Without Action by the Court in its March 19, 2007 Resolution.[36]

In a Compliance/Explanation[37] dated September 28, 2007, Atty. Bayhon explained that he was not in a position to comply with the Court’s resolution because he had long ceased to be the counsel of record of the plaintiffs in Civil Case No. 90-55003. He further averred that he had already turned over the records of the case to Ang Tiao’s family when he withdrew as counsel in 1997 to join a multinational corporation. Atty. Bayhon also requested that he be allowed to adopt in toto the pleadings and arguments raised in his Answer[38] and Position Paper[39] submitted to the Integrated Bar of the Philippines (IBP) in view of a disbarment complaint filed against him – also by herein complainant Sy. Both of these pleadings submitted to the IBP however failed to shed light into the circumstances surrounding the issuance of the assailed Order which granted the Ex-Parte Motion which allegedly could not now be located by Atty. Bayhon. He also sustained his averment that there is nothing on record to establish that he made an allegation that the deposits made with Branch 54 were superfluous and duplicitous.

On January 3, 2008, the OCA submitted its Report and Recommendation[40] to the Court, in compliance with the Resolution[41] of the Third Division directing the OCA to conduct an investigation on the mismanagement of court records in Branches 54 and 55 of the Regional Trial Court of Manila. It submitted the following findings:

It would appear that the incident in Civil Case No. 90-55003 was an isolated anomaly. The case involved rental deposits amounting to almost P260,000.00 that were released by virtue of a November 11, 1994 order issued by Judge Liwag, which order granted the Ex-Parte Motion to Withdraw Rental Deposits filed by Atty. Bayhon. According to the October 30, 2006 decision of the Court, the order granting the motion was drafted by Ms. Baby Manalastas, a court stenographer in RTC Branch 55 who has since migrated to the United States.

Based on the information gathered by the audit team, the Clerk of Court of RTC Branch 54 for the period November 1994 was Atty. Emerenciana O. Manook. Atty. Manook, who now serves as Clerk of Court VI of RTC, Branch 23, Allen, Northern Samar, was the Clerk of Court of RTC, Branch 54, Manila from July 1, 1989 to March 29, 1995.

On the other hand, the Officer-in-Charge (OIC) of RTC Branch 55 for the period November 1994 was Ms. Isabelita D. Artuz. Ms. Artuz served as OIC of the branch from September 1994 until November 1996 x x x.[42]

In light of these findings, the Court, in another Resolution[43] dated February 11, 2008, adopted the following recommendations of the OCA:

- That Atty. Emerenciana O. Manook, Clerk of Court, RTC, Branch 23, Allen, Northern Samar, and Ms. Isabelita D. Artuz, Office of Court of Appeals Associate Justice Fernanda L. Peralta, be DIRECTED TO COMMENT on the November 11, 1994 order issued by former RTC Branch 55 Manila Presiding Judge Hermogenes Liwag granting the Motion to Withdraw Rental Deposits filed by Atty. Walfredo Bayhon x x x;
- That action on the September 28, 2007 comment/explanation submitted by Atty. Walfredo C. Bayhon relative to the incident be DEFERRED pending the submission of Atty. Manook and Ms. Artuz of their comments.[44]

On June 17, 2008, Ms. Artuz submitted her explanation.[45] While she was a Legal Researcher at Branch 55 when the subject irregularity was allegedly committed, she admitted that she was not familiar with Civil Case No. 90-55003. She also did not know of any irregularity surrounding the issuance of the questioned Order as it dealt with a case docketed with Branch 54, and not with Branch 55. Sifting through her averments, the Court found a relevant information that in the past, Branch 54 used the sala of Branch 55 where Judge Liwag was then Presiding Judge.[46]

In a letter[47] dated September 26, 2008 submitted by Atty. Manook – the Branch Clerk of Court of Branch 54 during the time material to the case – she claimed that “[a]fter [a] careful scrutiny of the records, [she found] that in x x x Civil Case No. 90-55003 x x x, the Ex-Parte Motion to Withdraw Rental Deposits was filed by Atty. Walfredo Bayhon with Branch 55, RTC Manila. It was never filed with Branch 54, RTC Manila.” She added that she could not remember encountering the Ex-Parte Motion and was puzzled why the Order of Judge Liwag was typed by Baby Manalastas – a court stenographic reporter assigned to Branch 55 – when the Order involved a case filed with Branch 54.

In a Memorandum[48] dated February 3, 2009, the OCA found a prima facie case of irregularity in granting the Ex-Parte Motion due to the following factors:

- [t]he Motion and the subject Order could not be found in the records of Branch 54;
- [t]hey could not be produced either by Atty. Bayhon;
- [t]he Motion was filed with Branch 55, never with Branch 54, while the Order was typed or drafted by a stenographer of Branch 55, not by a personnel of Branch 54; and
- [c]omplainant in the civil case was not even furnished a copy of the Motion which was not even set for hearing.[49]

On March 25, 2009, the Court issued a Resolution[50] requiring Atty. Bayhon to show cause why he should not be disciplinarily dealt with for filing the Ex-Parte Motion with Branch 55, and not with Branch 54. He was also required to comment on the allegation that complainant was not furnished a copy of the Ex-Parte Motion and to exert his best efforts to submit the subject Ex-Parte Motion to the Court. The Clerk of Court of the Court of Appeals was also directed to furnish the Court a copy of the Ex-Parte Motion which was appealed thereto from

Branch 54 on July 11, 1996.[51]

Despite the Show Cause Resolution,[52] Atty. Bayhon failed to file his explanation and comment as required. Thus, in a Resolution[53] dated December 1, 2010, he was fined in the amount of P500.00 and directed to submit the required comment and explanation. In the same Resolution, the Court also required the Presiding Judge of Branch 54, to submit to the Court a copy of the subject Ex-Parte Motion in view of the Court of Appeals remanding the case to the said branch. Hon. Reynaldo A. Alhambra, then Pairing Judge of Branch 54, informed the Court that the subject Ex-Parte Motion was not attached to the expediente per certification of the Branch Clerk of Court, Atty. Noel Antay.[54] The OCA, for its part, reported in a Memorandum[55] dated April 4, 2011 that upon the certification[56] of Ms. Adora Millo, the Officer-In-Charge of Branch 55, a copy of the Ex-Parte Motion could not be produced since the civil case involving the Ex-Parte Motion is not in its docket. The OCA Memorandum further stated, viz.:

We had also directed the Office of the Clerk of Court of the Regional Trial Court of Manila to verify from the record of the disbursement voucher relative to the release of the rental deposit if a copy of the said ex-parte motion is attached. As certified by x x x Atty. Clemente M. Clemente, the Assistant Clerk of Court, the voucher discloses that no such document is attached x x x.[57]

The finding of the OCA – that the Ex-Parte Motion was also not attached to the disbursement voucher – is significant. It could be argued that such document may not be a necessary attachment in the issuance of a check by the Office of the Clerk of Court. However, the fact that all the employees involved – from the filing of the Ex-Parte Motion to the eventual issuance and withdrawal of the check – certify that the Ex-Parte Motion does not exist in the records within their respective custody casts serious doubt as to the regularity surrounding the filing of the Ex-Parte Motion.

Meanwhile, Atty. Bayhon again failed to comply with the Resolution of December 1, 2010. Thus, in the August 24, 2011 Resolution[58] of the Court, Atty. Bayhon was required to comply with the December 1, 2010 Resolution within ten days from notice, and to submit his memorandum within thirty days from notice. Since Atty. Bayhon yet again failed to comply, the Court issued another Resolution[59] dated April 16, 2012 requiring him to comply with the same December 1, 2010 Resolution within ten days from notice, otherwise the Court will order his arrest for non-compliance therewith.

On October 5, 2012, Atty. Bayhon finally filed a Very Respectful Apology and Compliance[60] with the OCA. While he apologized to the Court for the late submission of his response and compliance with its resolutions, he merely reiterated his previous string of excuses that in no way could have shed light to the circumstances in question:

- that he ceased to be the counsel for plaintiff Ang in 1997 when he left his law practice;
- that in view of his withdrawal as counsel, he no longer has possession and access to the subject Ex-Parte Motion as he had already turned over the files to Ang's children and had lost contact with them; and
- that due to these circumstances, he cannot proffer intelligent answers and explanations to the questions being posed on him by the Court.

We are not persuaded.

It is clear that the filing of the Ex-Parte Motion by Atty. Bayhon triggered the series of irregularities that have studded the case at bar: the Ex-Parte Motion was never shown to have been set for hearing; there is no record that the opposing party was notified; the Ex-Parte Motion was granted in an Order issued by the late Judge Liwag under Branch 54, but the Ex-Parte Motion could not be found in the case folio from the said branch; it was later

found that the Ex-Parte Motion was filed with Branch 55 where the case was not docketed; the Order granting the Motion was typed by a court stenographic reporter of Branch 55; nonetheless, the Motion could not be located among the files of Branch 55.

The Court had sought the explanation of Atty. Bayhon to shed light on the circumstances surrounding the filing of the Ex-Parte Motion, and to exert his best efforts to furnish us a copy of the said motion. The compliance of Atty. Bayhon was sought as early as October 30, 2006 – the date when the Court promulgated its Decision pertaining to the liability of herein respondents. It was in light of the Court’s recognition that some form of irregularity was committed in this case that prompted it to look at all angles and request an explanation from every relevant source of information. However, Atty. Bayhon, instead of shedding light in the discussion, only proffered unresponsive answers that were mostly reiterations of his averments in the pleadings he had earlier submitted to the IBP. As aptly observed and succinctly described by the OCA:

Atty. Bayhon’s explanations are unsatisfactory. His words are evasive and carefully selected as to free him from any liability. They do not directly confront the nagging questions, merely offering as excuses his resignation as counsel of record and turn-over of documents to his clients, and blaming his adversary’s negligence. However, he himself is to be greatly blamed for not promptly and fully complying with the directives of the Court, particularly the 25 March 2009 Resolution and the subsequent resolutions which dragged this case for so long a time. He refused to answer why he filed the subject motion at Branch 55, not at Branch 54. He did not comment on the allegation that the complainant in the civil case was not furnished a copy of the said motion which was not even set for hearing. He did not exert his best efforts in locating or producing the motion for submission to the Court. And he complied with the resolutions rather belatedly, or after he was threatened by the Court with arrest. It appears that he took the Court’s directives lightly.

Worse, Atty. Bayhon completely ignored the sanction of the Court in its 01 December 2010 Resolution imposing upon him a fine of P500.00. After almost two (2) years and several resolutions reiterating the said resolution, he has not paid the fine or even mentioned the penalty in his 01 October 2012 compliance.

A resolution of the Supreme Court should not be construed as a mere request, and should be complied with promptly and completely. Such failure to comply accordingly betrays not only a recalcitrant streak in character, but also disrespect for the Court’s lawful order and directive.[61] This contumacious conduct of refusing to abide by the lawful directives issued by the Court has likewise been considered as an utter lack of interest to remain with, if not contempt of, the system.[62] As a lawyer and an officer of the court, Atty. Bayhon should have been more than conscious and aware of his duty to strictly follow the Court’s orders and processes without unreasonable delay.[63]

We agree with the accurate and incisive discussion of the OCA on all points, except for the penalty imposed. The OCA imposed upon Atty. Bayhon an additional fine of P2,000.00 to the original fine of P500.00 for non-compliance with the directives of the Court. This additional fine was also imposed for Atty. Bayhon’s continuously ignoring the several Court resolutions reiterating the payment of the original fine.[64]

Atty. Bayhon should be imposed a stringer penalty. The disobedience and the consequent delays he incurred had protracted the pace of the administrative investigation in the case at bar. While Atty. Bayhon may have apologized to this Court a number of times, his sincerity is not reflected in the manner that he would deal with the Court after each tendered apology: he would again not comply, and hence cause delay, to a subsequent resolution in clear violation of the Lawyer’s Oath[65] which states, among others, that a lawyer “will conduct [himself] as a lawyer according to the best of [his] knowledge and discretion, with all good fidelity as well to the courts as to [his] clients.”

Aside from not complying with the resolutions of the Court, the evidence on record is clear that Atty. Bayhon also violated Canon 10, Rule 10.01 of the Code of Professional Responsibility which states that “[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.” It is significant that Atty. Bayhon has consistently claimed that there is no proof to show that he ever claimed that the amounts deposited with Branch 32 were superfluous and duplicitous[66] – the reason used as a basis for the issuance of the assailed Order. He also stated that from his recollection, if there was a motion to withdraw cash deposits with Branch 54, there was also a simultaneous request to the trial court to replace the money with a supersedeas bond.[67] He further stated that “no trial judge worth his salt, Judge Liwag in this instance, would have allowed such a withdrawal without a corresponding replacement.”[68]

On its face, however, the following Order of Judge Liwag shows that the deposits were allowed to be withdrawn due to their “superfluity and duplicity” vis-à-vis the supersedeas bond already posted with Branch 32, and not because the amount withdrawn with Branch 54 was replaced by a supersedeas bond:

X X X X

It is well to emphasize here that such deposits were made in the concept of monthly rentals for the plaintiffs’ occupancy of the premises in controversy, here and in the ejectment suit now on appeal with Branch 32 of this same Court. It would appear, however, from the attachments to the Motion to Withdraw Rental Deposits that sufficient supersedeas bond was already posted in that appealed ejectment bond case by the plaintiffs hereto, defendants therein, in the total sum of P260,000.00. Surely, the rental deposits made in this case become superfluous and serve no legal purpose. It is actually duplicitous and its non-release would actually prejudice the plaintiffs.[69]

Atty. Bayhon’s unsubstantiated claim that the deposits withdrawn were replaced by a supersedeas bond is a legal incredulity. It is a preposterous excuse that does not only attempt to mislead the Court – it was proffered in an attempt to evade the directive of the Court to produce a copy of the Ex-Parte Motion which may open another can of worms. The Order clearly states that the attachments to the Ex-Parte Motion showed that there was already a “supersedeas bond” posted with Branch 32 in the amount of P260,000.00, that is why Judge Liwag ordered and authorized the withdrawal of the same amount of P260,000.00 from Branch 54. It is precisely the claim of herein complainant that it was fraudulent misrepresentation on the part of Atty. Bayhon to make it appear that the Branch 54 deposits were superfluous because the deposits made with Branches 32 and 54 were separate, distinct and covered different periods – a false claim that Atty. Bayhon has continuously denied making in the Ex-Parte Motion. But instead of producing and submitting to this Court a copy of the Ex-Parte Motion to conclusively prove that he did not make such a false averment, Atty. Bayhon hides behind the rules of evidence claiming that without the subject Ex-Parte Motion, this allegation against him is but hearsay.

The OCA appears to be right when it observed that Atty. Bayhon seems to have a selective memory,[70] since he remembers only the matter pertaining to the supersedeas bond, but has claimed that he no longer remembers the other circumstances surrounding the filing of the Ex-Parte Motion.[71] To be sure, Atty. Bayhon has never denied having filed the controversial Ex-Parte Motion, but as pointed out by the OCA:

x x x His explanation about the circumstances surrounding its filing is unsatisfactory as he did not exert his utmost efforts to locate the Motion from his clients or from the courts. He did not even mention in his “Explanation/Compliance” that he tried to contact his clients to verify if they still have in their possession a copy of the Motion.[72]

For failing to explain, in good faith, the circumstances surrounding the filing of the Ex-Parte Motion which he himself filed, for proffering misleading claims in the course of the subject administrative investigation, and for not having shown and proved that he exerted his best efforts to secure and submit a copy of the subject Ex-Parte Motion – all in violation of the resolutions issued by this Court – Atty. Bayhon violated the Lawyer’s Oath and Canon 10, Rule 10.01 of the Code of Professional Responsibility. Under Section 27, Rule 138 of the Rules of

Court, a member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any violation of the Lawyer's Oath, viz.:

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 willful disobedience of any unlawful order of a superior court, or for corruptly or willfully appearing as an attorney for a party to a case without authority to do so. x x x

We believe that the proven acts and omissions of Atty. Bayhon in the case at bar warrant the imposition of the penalty of suspension from the practice of law for six (6) months. He has attempted to mislead the Court, and his non-compliance with the resolutions of the Court dated March 25, 2009, December 1, 2010 and August 24, 2011 shows nothing but an indifference to our directives which cannot be taken lightly, especially that it has affected and protracted the investigation and resolution of an administrative matter where his explanation and assistance is a crucial factor.

WHEREFORE, Atty. Walfredo C. Bayhon is hereby found guilty of violating the Lawyer's Oath and Canon 10, Rule 10.01 of the Code of Professional Responsibility. This Court imposes upon Atty. Bayhon the penalty of **SUSPENSION** from the practice of law for a period of **SIX (6) MONTHS** to commence immediately upon receipt of this Decision. This penalty of suspension is imposed in addition to the fine of P500.00 under the December 1, 2010 Resolution of this Court. Atty. Bayhon is further **WARNED** that a commission of the same or similar acts in the future shall be dealt with more severely.

Let copies of this Decision be furnished to the Office of the Court Administrator to be disseminated to all courts throughout the country, to the Office of the Bar Confidant to be appended to Atty. Walfredo C. Bayhon's personal records, and to the Integrated Bar of the Philippines for its information and guidance.

### **SO ORDERED.**

Sereno, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Reyes, JJ., concur.

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[1] Rollo, pp. 283-291.

[2] Id. at 1-4.

[3] Id. at 285, 346-347.

[4] Id. at 24.

[5] Id. at 102.

[6] Id. at 1-2, 284-285.

[7] Id. at 2, 285.

[8] Id.

[9] Id. at 285.

[10] Id. at 354.

[11] Id. at 2-4, 285.

[12] Id.

[13] Id. at 9-11, 285.

[14] Id. at 118-119, 285.

[15] Id. at 171-173.

[16] Id. at 253-262.

[17] Id. at 260-262.

[18] Id. at 276-281.

[19] Id. at 280-281.

[20] Supra note 1.

[21] Id. at 288.

[22] Id. at 289.

[23] Id.

[24] Id. at 290.

[25] Id.

[26] Id. at 289-290.

[27] Id. at 287-288.

The duties of Clerks of Court under the 2002 Revised Manual for Clerks of Court are as follows:

Adjudicative Support Functions:

- a. Prepares and signs summonses, subpoenas and notices, writs of execution, remittances, and releases of prisoners;
- b. Certifies true copies of decisions, orders, and other processes, letters of administration and guardianship; transmittals of appealed cases, indorsements and communications; and
- c. Prepares and signs monthly reports of cases.

Non-Adjudicative Functions:

- a. Plans, directs, supervises and coordinates the activities of all divisions/sections/units in the Office of the Clerk of Court;
- b. Controls and manages all court records, exhibits, documents, properties and supplies;
- c. Acts on applications for leave of absence and signs daily time records;
- d. Determines the docket fees to be paid by the parties-litigants as provided in the Rules of Court;
- e. Issues clearances in appropriate cases;
- f. Provides information services to the public and private agencies including bar associations;
- g. Prepares cases for raffle;

- h. Safekeeps and maintains a judgment book and execution book;
- i. Studies and recommends to the Executive Judge ways and means to improve both adjudicative and support functions;
- j. Performs special functions as ex-officio municipal sheriff;
- k. Implements all orders and policies of the court in connection with the speedy administration of justice;
- l. Performs other duties that may be assigned to him.

[28] Rollo, p. 288. Citation omitted.

[29] Id. Citation omitted.

[30] Id. at 289.

[31] Id.

[32] Id. at 292-296.

[33] Id. at 293.

[34] Id. at 297.

[35] Id. at 298-301.

[36] Id. at 311.

[37] Id. at 319-326.

[38] Id. at 338-344.

[39] Id. at 327-337.

[40] Id. at 353-355.

[41] Id. at 314-315.

[42] Id. at 354-355. Emphasis omitted.

[43] Id. at 360-361.

[44] Id. at 355. Emphasis omitted.

[45] Id. at 363-364.

[46] Id. at 375.

[47] Id. at 369-370.

[48] Id. at 373-377.

[49] Id. at 375.

[50] Id. at 378-380.

[51] Id. at 379.

[52] Supra note 50.

[53] Id. at 394-395.

[54] Id. at 396-397.

[55] Id. at 405.

[56] Id. at 406.

[57] Id. at 405.

[58] Id. at 410-411.

[59] Id. at 416-417.

[60] Id. at 419-424.

[61] Citing *Tugot v. Judge Coliflores*, 467 Phil. 391, 402-403 (2004).

[62] Citing *Parane v. Reloza*, A.M. No. MTJ-92-718, November 7, 1994, 238 SCRA 1, 4.

[63] *Rollo*, pp. 432-432-A.

[64] Id. at 432-A.

[65] I, \_\_\_\_\_, do solemnly swear that I will maintain allegiance to the Republic of the Philippines; I will support the Constitution and obey the laws as well as the legal orders of the duly constituted authorities therein; I will do no falsehood, nor consent to the doing of any in court; I will not wittingly or willingly promote or sue any groundless, false or unlawful suit, nor give aid nor consent to the same; I will delay no man for money or malice, and will conduct myself as a lawyer according to the best of my knowledge and discretion, with all good fidelity as well to the courts as to my clients; and I impose upon myself this voluntary obligation without any mental reservation or purpose of evasion. So help me God.

[66] *Rollo*, p. 374.

[67] Id. at 420-421.

[68] Id. at 421.

[69] Id. at 24. Emphases supplied.

[70] Id. at 431.

[71] Id. at 420-421.

[72] Id. at 375.

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