

ROGELIO H. VILLANUEVA, COMPLAINANT, VS. ATTY. AMADO B. DELORIA, RESPONDENT.*A.C. No. 5018. January 26, 2007*

Ponente: TINGA, J.

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This treats of the Complaint[1] for Disbarment dated February 17, 1999 filed by Rogelio H. Villanueva (Villanueva) against Atty. Amado B. Deloria in connection with HLRB Case No. REM-080592-5166, entitled “Spouses Conrado De Gracia v. Estate of Jaime Gonzales, et al.” Atty. Deloria, a former full-time Commissioner of the Housing and Land Use Regulatory Board (HLURB), appeared as counsel for the spouses De Gracia.

Villanueva avers that a decision in that case was rendered by Housing and Land Use Arbiter,[2] Atty. Teresita R. Alferez, requiring the Estate of Jaime Gonzales to, among other things, refund to the spouses De Gracia the amount of P69,000.00 plus interest at the prevailing commercial interest rates. The case was eventually assigned to Villanueva upon the latter’s designation as Arbiter.

It appears that Atty. Deloria filed a Motion for Issuance of Substitute Judgment and for Consignation[3] claiming that the Estate of Jaime Gonzales does not want to pay interest based on commercial interest rates. Villanueva asserts, however, that Atty. Deloria’s allegation is belied by two motions filed by counsel for the Estate of Jaime Gonzales which merely seek to clarify the precise interest rate applicable to the case in order for it to fully comply with the decision.

Atty. Deloria’s misrepresentation is allegedly a violation of the Code of Professional Responsibility (Code), particularly Canons 1,[4]

10,[5] 12[6] and 19[7] thereof, the Attorney’s Oath of Office and Art. 19 of the Civil Code. Atty. Deloria also allegedly violated Canon 11[8] of the Code because he sought the substitution of a decision which he knew had already become final and partially executed.

Villanueva notes that Atty. Deloria enclosed with his motion a check in the amount of P69,000.00 payable to the order of the Estate of Jaime Gonzales and Corazon Gonzales, representing the principal refunded to the spouses De Gracia in compliance with the decision. Villanueva states that the check was drawn against Atty. Deloria’s personal checking account in violation of Canon 16[9] of the Code.

Moreover, according to Villanueva, Atty. Deloria offered him 50% of the recoverable amount in the case if he resolves the latter’s motion favorably.[10] Atty. Deloria’s conduct allegedly violates the previously cited canons of the Code, Canon 13,[11] Rule 15.06,[12] Canon 15 of the Code, Art. 212 of the Revised Penal Code, the Attorney’s Oath of Office and Art. 19 of the Civil Code.

Villanueva also alleges that Atty. Deloria used his influence as former Commissioner of the HLURB to persuade Atty. Alferez to impose interest based on commercial rates instead of the interest rate fixed in Resolution No. R-421[13] and Memorandum Circular No. 19,[14] both of which provide a uniform rate of interest in decisions

involving refunds. Atty. Deloria also allegedly used his connections in the HLURB to prevent Villanueva from releasing an Order denying the former's motion and to prevail upon the agency's Legal Services Group to interpret the term "commercial rate of interest" in a way that is favorable to his client's case, again in violation of the Code.[15]

Further, Villanueva claims that Atty. Deloria assisted his client in filing an unfounded criminal case against him before the Office of the Ombudsman with the purpose of getting even with Villanueva for denying their motion. When his client pursued this course of action, Atty. Deloria allegedly should have withdrawn his services in accordance with Rule 22.01,[16] Canon 22 of the Code.

In his Comment[17] dated September 22, 2000, Atty. Deloria denies any wrongdoing and sought the dismissal of the Complaint for lack of merit. He avers that the refusal of the Estate of Jaime Gonzales to pay the interest stipulated in the decision is evident from the various motions it has filed. On the alleged commingling of his funds with those of his clients', Atty. Deloria claims that the spouses De Gracia requested him to advance the amount intended for consignment as they were then on vacation in the United States. He also maintains that he did not exert any influence on the HLURB to rule in his clients' favor, adding that the draft order which he filed in the case is required under the rules of the agency.

Atty. Deloria counters that it is Villanueva who has exhibited partiality in favor of the Estate of Jaime Gonzales by failing to rule on the motions for clarification filed by the latter, thereby forcing the spouses De Gracia to wait for an inordinately long time for the decision in their favor to be fully implemented.

Villanueva, in his Reply[18] dated November 10, 2000, contends that he would have been indicted by the Office of the Ombudsman if it were true that his Order in the case was motivated by bias and partiality in favor of the Estate of Jaime Gonzales.

In a Resolution[19] dated February 19, 2001, we referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

Investigating Commissioner Renato G. Cunanan submitted a Report[20] dated September 29, 2005, finding merit in the Complaint and recommending that Atty. Deloria be suspended from the practice of law for two (2) years and/or be fined in the amount of P20,000.00. This recommendation was annulled and set aside by the IBP in its Resolution No. XVII-2006-279 dated May 26, 2006. The case was instead dismissed for lack of merit.

The report and recommendation of the Investigating Commissioner appears to be based solely on the Rollo of the case which the Court sent to the IBP pursuant to the Resolution dated February 19, 2001. The Investigating Commissioner did not conduct any hearing to determine the veracity of the allegations in Villanueva's Complaint and the truthfulness of Atty. Deloria's answers thereto.

A formal investigation is a mandatory requirement which may not be dispensed with except for valid and compelling reasons.[21] In *Baldomar v. Paras*,[22] we held:

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. x x x

Rule 139-B of the Rules of Court provides the procedure for investigation in disbarment and disciplinary proceedings against attorneys before the IBP, thus:

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 or 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.

We find that due observance of the foregoing rules is necessary for the proper resolution of this case.

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

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Carpio-Morales, and Velasco, Jr., JJ., concur.

[1] Rollo, Vol. 1, pp. 1-38.

[2] Now HLURB Commissioner.

[3] Rollo, Vol. 1, pp. 47-49.

[4] CANON 1—A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCESSES.

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

[5] 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.

Rule 10.02—A lawyer shall not knowingly misquote or misrepresent the contents of a paper, the language or the argument of opposing counsel, or the text of a decision or authority, or knowingly cite as law a provision already rendered inoperative by repeal or amendment, or assert as a fact that which has not been proved.

[6] CANON 12—A LAWYER SHALL EXERT EVERY EFFORT AND CONSIDER IT HIS DUTY TO ASSIST IN THE SPEEDY AND EFFICIENT ADMINISTRATION OF JUSTICE.

[7] CANON 19—A LAWYER SHALL REPRESENT HIS CLIENT WITH ZEAL WITHIN THE BOUNDS OF THE LAW.

[8] CANON 11—A LAWYER SHALL OBSERVE AND MAINTAIN THE RESPECT DUE TO THE COURTS

AND TO JUDICIAL OFFICERS AND SHOULD INSIST ON SIMILAR CONDUCT BY OTHERS.

[9] CANON 16—A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION.

Rule 16.01—A lawyer shall account for all money or property collected or received for or from the client.

[10] Rollo, Vol. 1, p. 13.

[11] CANON 13—A LAWYER SHALL RELY UPON THE MERITS OF HIS CAUSE AND REFRAIN FROM ANY IMPROPRIETY WHICH TENDS TO INFLUENCE OR GIVES THE APPEARANCE OF INFLUENCING THE COURT.

[12] Rule 15.06—A lawyer shall not state or imply that he is able to influence any public official, tribunal or legislative body.

[13] Rollo, p. 71.

[14] Id. at 60.

[15] Id. at 17-21.

[16] Rule 22.01—A lawyer may withdraw his services in any of the following cases:

- a) When the client pursues an illegal or immoral course of conduct in connection with the matter he is handling;
- b) When the client insists that the lawyer pursue conduct violative of these canons and rules;
- c) When his inability to work with co-counsel will not promote the best interest of the client;
- d) When the mental or physical condition of the lawyer renders it difficult for him to carry out the employment effectively;
- e) When the client deliberately fails to pay the fees for the services or fails to comply with the retainer agreement;
- f) When the lawyer is elected or appointed to public office; and
- g) Other similar cases.

[17] Rollo, Vol. 1, pp. 177-190.

[18] Id. at 195-203.

[19] Id. at 233.

[20] Rollo, Vol. 2, pp. 245-255.

[21] Tabang v. Gacott, A.C. No. 6490, September 29, 2004, 439 SCRA 307; Fajardo v. Dela Torre, A.C. No. 6295, April 14, 2004, 427 SCRA 125; and Arandia v. Magalong, 435 Phil. 199 (2002).

[22] 401 Phil. 370, 373 (2000), citing Cottam v. Atty. Laysa, 383 Phil. 510, 514-516 (2000).

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