



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

**MATTHEW CONSTANCIO M. SANTAMARIA,**  
*Complainant,*

**A.C. No. 12006**

Present:

PERLAS-BERNABE, J.,  
Chairperson,  
HERNANDO,  
INTING,  
DELOS SANTOS, and  
GAERLAN,\* JJ.

- versus -

**ATTY. RAUL O. TOLENTINO,**  
*Respondent.*

Promulgated:

**29 JUN 2020**

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RESOLUTION

**DELOS SANTOS, J.:**

Before Us is an administrative complaint for disbarment filed by Matthew Constancio O. Santamaria (complainant) against Atty. Raul O. Tolentino (respondent) for violation of the Lawyer's Oath and the Code of Professional Responsibility (CPR).

Complainant gives the following account of the facts that spawned the filing of the present administrative complaint.

In his Verified Complaint<sup>1</sup> dated December 21, 2015, complainant alleged that respondent violated his lawyer's oath and the CPR when he drafted and notarized a document known as Irrevocable General Power of

\* Designated as additional member of the Second Division per Special Order No. 2780 dated May 11, 2020.

<sup>1</sup> Rollo, pp. 2-5.

Attorney (IGPA)<sup>2</sup> which made possible the conveyance of ten (10) real properties owned by his late mother, Miriam Maglana (Miriam) to his father, Manuel Santamaria (Manuel). When Manuel filed a criminal complaint for adultery against Miriam, respondent appeared as her counsel and represented the latter in the Regional Trial Court (RTC) where the case remained unresolved for an unreasonable length of time. When Miriam was already dying of cancer and in dire need of money, she wrote a letter to Supreme Court Administrator Christopher Lock thereby pleading for relief from the delay of the case.<sup>3</sup> The RTC eventually rendered a Decision<sup>4</sup> dated February 11, 2009, dismissing the case in favor of Miriam. Manuel elevated the adverse judgment to the Court of Appeals (CA).<sup>5</sup> While the case was pending in the appellate court, Miriam died of cancer. Unfortunately, however, respondent, being her counsel of record, failed to inform the court of his client's death.<sup>6</sup> Worse, he neglected to file an Appellee's Brief in violation of the lawyer's oath and the CPR.<sup>7</sup>

Subsequently, respondent contacted Ivy Lois Lardizabal (Ivy), the sister of complainant, informing her that Manuel filed a motion for reconsideration to which complainant and his siblings should reply immediately and asked for ₱25,000.00 as payment thereof. But the heirs of Miriam informed him that they cannot however afford the said amount. Respondent was also informed by their stepfather to do what is appropriate to protect their interest with a promise for later payment.<sup>8</sup>

In a letter<sup>9</sup> dated March 2, 2012, complainant was surprised when respondent represented Manuel in conveying to complainant and his siblings the alleged 33-hectare farm at Bayabas, Toril, Davao City (Toril farm) which confirmed his suspicion that respondent was behind the proposed Memorandum of Agreement (MOA)<sup>10</sup> dated March 3, 2009, wherein Manuel proposed to sell the same property to pay respondent his legal fees. Furthermore, respondent showed interest in the Toril farm by asking complainant's counsel to put their position in writing.<sup>11</sup>

After receiving the case files from his former lawyer last December 2015, complainant saw certain documents which contained information that led him to file an Addendum to the Verified Complaint Against Atty. Raul O. Tolentino, Roll No. 16154 filed on December 21, 2015.<sup>12</sup> However, due to unfortunate circumstances, when complainant went to the Integrated Bar of the Philippines (IBP) Office in Pasig City to file the said Addendum, it was

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<sup>2</sup> Id. at 312-314.

<sup>3</sup> Id. at 161.

<sup>4</sup> Id. at 228-230.

<sup>5</sup> Id. at 12-16.

<sup>6</sup> Id. at 13.

<sup>7</sup> Id. at 368.

<sup>8</sup> Id. at 18.

<sup>9</sup> Id. at 170.

<sup>10</sup> Id. at 21-23.

<sup>11</sup> Id. at 3.

<sup>12</sup> Id. at 51-53.

rejected by the receiving staff at the Commission on Bar Discipline (CBD). Hence, he sought recourse in the Office of the Bar Confidant (OBC).<sup>13</sup>

The OBC, upon receiving the letter<sup>14</sup> of complainant, issued an Indorsement<sup>15</sup> referring the case to Atty. Rosario T. Setias-Reyes, IBP National President, for appropriate action. Dissatisfied with the Report and Recommendation<sup>16</sup> dated October 12, 2016 and the Resolution<sup>17</sup> dated November 05, 2016 of the IBP, complainant prays that such be reconsidered or set aside.

In his defense,<sup>18</sup> respondent denies having committed the unethical and immoral acts which complainant claims he did. He alleged that Miriam and Manuel were married on April 3, 1966 and out of their marriage, Manuel John Santamaria, Mark Santamaria, and Michael Luke Santamaria were born. Sometime in 1981 and 1982, the spouses had frequent quarrels over an alleged romantic relation of Miriam with Ignacio Almonte, Jr. (Ignacio) who was staying as boarder, which eventually resulted to a separation *de facto* between the spouses. Out of Miriam and Ignacio's amorous relationship, Ivy was born. This prompted Manuel to file a criminal case for adultery against them.<sup>19</sup> Miriam sought the legal assistance of respondent and after a thorough discussion with her parents, a decision was arrived at to have the case settled, considering that her parents are well known and well respected in Davao City.<sup>20</sup>

Respondent was requested to discuss the settlement with Atty. Dela Victoria and afterwards, Manuel agreed to the settlement provided that certain properties are ceded to him, especially the properties at Bato and Toril, Davao City which he and his parents had redeemed from the bank after Miriam failed to pay the loan. Miriam agreed that ten properties will be ceded to Manuel to sell, possess, and administer as the same could not be transferred to him personally, he being an American citizen.<sup>21</sup>

Prior to October 24, 1989, the parties met in the office of Atty. Dela Victoria where it was agreed that the said lawyer shall draft the power of attorney, while respondent shall prepare the Affidavit of Desistance.<sup>22</sup> Subsequently, the parties met again, this time, in the office of respondent for the signing of the documents but Miriam and respondent objected to the word "irrevocable." However, Atty. Dela Victoria explained that it was to guarantee that Miriam will not later on revoke the power of attorney. Thus,

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<sup>13</sup> Id. at 43-44.

<sup>14</sup> Id.

<sup>15</sup> Id. at 42.

<sup>16</sup> Id. 367-382.

<sup>17</sup> Id. at 403.

<sup>18</sup> Id. at 512-516.

<sup>19</sup> Id. at 204-205.

<sup>20</sup> Id. at 372.

<sup>21</sup> Id. at 512.

<sup>22</sup> Id. at 206.

to put an end to the issue of the word “irrevocable,” Miriam agreed to such proposal as it was the desire of her children to settle the criminal case between her and Manuel as evidenced by the Transcript of Stenographic Notes<sup>23</sup> in Civil Case No. 26,852-98. This also finds support in complainant’s July 26, 2000 letter<sup>24</sup> to his mother Miriam. Miriam signed the IGPA with the name of respondent stamped as notary public. After the execution and notarization of the said document, the parties then proceeded to the City Prosecutor’s Office where Manuel signed an Affidavit of Desistance.<sup>25</sup> The City Prosecutor’s Office later filed a Motion to Dismiss in court and as a consequence thereof, an Order of dismissal was issued.<sup>26</sup>

Respondent likewise argued that contrary to complainant’s allegation, it was Atty. Dela Victoria who drafted the IGPA. He pointed out that Miriam was not totally deprived of her paraphernal properties because she had eighteen (18) properties left after the settlement. Complainant made it appear that he was not aware of the IGPA and that his mother was destitute when it was him who wrote a letter to his mother where he mentioned the IGPA and accused his mother of maintaining a lavish lifestyle.<sup>27</sup>

Respondent argues that there is no truth to the allegation that he employed delaying tactics in the handling of the case of Miriam since the delay was caused by the absence of a regular judge in the sala where it was raffled. Consequently, the hearings were done only by a succession of acting judges assigned to hear it but could only report for work two (2) days in a week. He even drafted a letter addressed to the Office of the Court Administrator where Miriam pleaded for a speedy disposition of the case.<sup>28</sup>

He also denies the allegation that he was not able to inform the Court of Appeals of Miriam’s death since it was complainant who refused to provide him a copy of his client’s death certificate, the full names and addresses of her heirs, and calls to Bernie Lardizabal (Lardizabal), Miriam’s then common-law husband, were ignored. Since the heirs of Miriam are non-cooperative with him, he could not file a withdrawal of appearance in the case nor could he submit an appellee’s brief. That contrary to complainant’s baseless allegation, respondent contacted Ivy and asked for ₱15,000.00 only which the heirs of Miriam cannot provide.<sup>29</sup>

Finally, respondent was also not aware of the MOA until he received a formal copy of the complaint where it was attached. The MOA appears to have been prepared after the consultation that transpired between Manuel and his children. Respondent is not interested in the Toril farm because he

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<sup>23</sup> Id. at 69-134.

<sup>24</sup> Id. at 148-149.

<sup>25</sup> Id. at 206.

<sup>26</sup> Id. at 373.

<sup>27</sup> Id. at 373.

<sup>28</sup> Id. at 374.

<sup>29</sup> Id.

has about 46 hectares of his own contrary to the complainant's allegation.<sup>30</sup>

### **Report and Recommendation of the IBP**

In a Report and Recommendation<sup>31</sup> dated October 12, 2016, Investigating Commissioner Juan Orendain P. Buted (Commissioner Buted) stated that he failed to see how complainant strongly believes that respondent is at fault as it was evident in complainant's July 26, 2000 letter<sup>32</sup> to his mother that the IGPA gave Manuel the authority to administer and sell the 10 properties and that it was executed by Miriam as part of their settlement in the criminal complaint for adultery. Even assuming that it was respondent who prepared the IGPA, there is no proof as to the vitiation of Miriam's consent in signing the document. No concrete and convincing evidence was presented to support the allegation of conspiracy between respondent and Manuel as pointed out in the report of the Investigating Commissioner.

The CBD likewise finds that the delay in the resolution of the case was caused by the long absence of the presiding judge. Respondent has also sufficiently explained his side as to his inability to notify the CA of his client's death. To support this claim, he submitted an Affidavit<sup>33</sup> of a certain Evelyn C. Demoni stating that respondent had exerted efforts through her to obtain a copy of Miriam's death certificate and the names and addresses of all the heirs.

Commissioner Buted therefore recommends that the complaint be dismissed as there was no showing of malice, ill-will, irregularity or any misconduct on the part of respondent and that an attorney enjoys the legal presumption of innocence and as an officer of the court.

Complainant moved for a reconsideration but the same was denied by a resolution of the IBP Board of Governors.<sup>34</sup>

### **The Court's Ruling**

This Court resolves to adopt the IBP findings with modification.

Disbarment is the most severe form of disciplinary sanction given to a lawyer. It is with high regard that this Honorable Court has repeatedly held in various cases that contrary to the penalty that complainant is seeking to be

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<sup>30</sup> Id. at 375.

<sup>31</sup> Id. at 367-382.

<sup>32</sup> Id. at 148-149.

<sup>33</sup> Id. at 245.

<sup>34</sup> Id. at 403.



imposed against respondent, the power to disbar or suspend ought always to be exercised on the preservative and not on the vindictive principle, with great caution and only for the most weighty reasons.<sup>35</sup> It should only be imposed in clear cases of misconduct affecting the standing and moral character of the lawyer as an officer of the court and a member of the Bar.<sup>36</sup> Hence, this Court has arrived at the following conclusions.

No less than the Honorable CA took notice in its Resolution<sup>37</sup> dated September 29, 2011 in the case of *Miriam Maglana vs. Manuel Santamaria* (CA-G.R. CV No. 02279-MIN) of the fact that respondent failed to notify the said Court of the death of his client and along with this, said Court also took notice of the failure of respondent to file an Appellee's Brief for his client. Nowhere in respondent's defense did he deny the said finding of the Court of Appeals. His only proof to support his defense was a mere affidavit of a certain Evelyn Demoni<sup>38</sup> who purportedly claimed that respondent exerted efforts to get a copy of the death certificate of Miriam. At the outset, it must be stressed that "under the rules, it is the duty of the attorney for the deceased defendant to inform the court of his client's death and to furnish the court with the names and residences of the executor, administrator, or legal representative of the deceased."<sup>39</sup> Sections 16 and 17, Rule 3 of the Rules of Court provide:

Sec. 16. *Duty of attorney upon death, incapacity, or incompetency of party.* – Whenever a party to a pending case dies, becomes incapacitated or incompetent, it shall be the duty of his attorney to inform the court promptly of such death, incapacity or incompetency, and to give the name and residence of his executor, administrator, guardian or other legal representative.

Sec. 17. *Death of party.* – After a party dies and the claim is not thereby extinguished, the court shall order, upon proper notice, the legal representative of the deceased to appear and to be substituted for the deceased, within a period of thirty (30) days, or within such time as may be granted. If the legal representative fails to appear within said time, the court may order the opposing party to procure the appointment of a legal representative of the deceased within a time to be specified by the court, and the representative shall immediately appear for and on behalf of the interest of the deceased. The court charges involved in procuring such appointment, if defrayed by the opposing party, may be recovered as costs. The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint guardian *ad litem* for the minor heirs.

The purpose behind this rule is the protection of the right to due process of every party to the litigation who may be affected by the

<sup>35</sup> *Gatmaytan, Jr. v. Atty. Ilaos*, 490 Phil. 165, 166 (2005).

<sup>36</sup> *Montano v. IBP*, 410 Phil. 201, 209 (2001).

<sup>37</sup> *Rollo*, pp. 12-13.

<sup>38</sup> *Id.* at 245.

<sup>39</sup> *Heirs of Maximo Regoso v. Court of Appeals*, 286 Phil. 454, 457-458 (1992).

intervening death of the lawyer's client. The deceased litigant is herself or himself protected as he or she continues to be properly represented in the suit through the duly appointed legal representative of his estate.<sup>40</sup> It should be duly noted that unless properly relieved, the counsel is responsible for the conduct of the case. He is obligated by his client and the court to do what the interest of his client requires until the end of litigation or his representation is terminated formally and there is a termination of record.<sup>41</sup>

In addition, "the law operates on the presumption that the attorney for the deceased party is in a better position than the attorney for the adverse party to know about the death of his client and to inform the court of the names and addresses of his legal representative or representatives."<sup>42</sup>

Indubitably, respondent failed to inform the CA of the death of Miriam. His defense that complainant refused to provide a copy of Miriam's death certificate, the full names and addresses of her heirs, and that his calls to Lardizabal were ignored, are not, at all convincing for he could have, nonetheless, proceeded to inform the court of his client's death and the surrounding circumstances to prove that he had faithfully and conscientiously discharged his duties as a lawyer despite the lack of cooperation or non-cooperation of the heirs of Miriam. Nowhere was it stated that respondent failed to give a copy of the death certificate.

As to respondent's failure to file an Appellee's Brief, this Court believes and so holds that he is liable for neglect of duty under Rule 18.03 of the CPR which provides that:

Rule 18.03 – A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

In *Barbuco v. Beltran*,<sup>43</sup> the Supreme Court found respondent guilty of negligence and suspended him from the practice of law for six months for his failure to file a brief within the reglementary period. "By accepting a case, a lawyer is duty bound to serve his client with competence and diligence of a good father of a family."<sup>44</sup> Respondent's defense that he was not paid by his client of the expenses does not justify a departure from his avowed duty to serve a client with competence and diligence. Respondent is reminded that practice of law is not a money-making trade. It is not a business but in essence, a form of public service. Non-payment of fees is not a valid justification for not filing an Appellee's Brief.

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<sup>40</sup> *Napere v. Barbarona, et al.*, 567 Phil. 354, 359-360 (2008).

<sup>41</sup> *Orcino v. Gaspar*, 344 Phil. 792, 798 (1997).

<sup>42</sup> *Supra* note 39.

<sup>43</sup> 479 Phil. 692 (2004).

<sup>44</sup> Antiquiera, E. (2013). *Comments on legal and judicial ethics*, pp. 80-81.

As to the issue of an irrevocable power of attorney, it must be stressed that a power of attorney is basically a written document whereby the authority of the principal conferred upon his agent is not to be extended by implication beyond the natural and ordinary significance of the terms in which that authority has been given. The attorney has only such authority as the principal has chosen to confer upon him, and one dealing with him must ascertain at his own risk whether his acts will bind the principal.<sup>45</sup> Thus, from the definition it can be deduced that all power of attorneys should be revocable as this would defeat its purpose being merely an instrument used to confer authority of the principal to his counsel. This directs to the point that making the power of attorney irrevocable would mean that the counsel has more authority over the property of the principal than the principal who actually owns the property. Although respondent in his defense objected as to the irrevocable nature of the general power of attorney, still he proceeded to notarize the said document despite his knowledge as a lawyer that all power of attorneys should not be irrevocable.

Complainant in his verified complaint alleged that respondent violated the provision of the notarial law when he drafted and notarized an Irrevocable General Power of Attorney where Miriam conveyed to Manuel, titles to ten (10) parcels of land despite the fact that there is no such thing as an irrevocable power of attorney. Worse, he took advantage of the ignorance and gullibility of Miriam who was only a high school graduate. This allegation is clearly misplaced. As shown in the records of the case, it was not respondent who drafted the document but a certain Atty. Dela Victoria, while respondent's participation was only to notarize it. Considering that the IGPA was executed freely and voluntarily by the parties, the notary public is no longer obligated to go beyond the contents of the document. Section 1, Rule II of A.M. No. 02-8013-SC provides:

Section 1. *Acknowledgment.* – “Acknowledgment” refers to an act in which in individual on a single occasion:

- a. Appears in person before the notary public and presents an integrally complete instrument or document;
- b. is attested to be personally known to the notary public or identified by the notary public through competent evidence of identity as defines by these Rules; and
- c. represents to the notary that the signature on the instrument or document was voluntarily affixed by him for the purposes stated in the instrument or document, declares that he has executed the instrument or document as his free and voluntary act and deed, and, if he acts in a particular representative capacity, that he has the authority to sign in that capacity.

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<sup>45</sup> *National Bank v. Tan Ong Sze*, 53 Phil. 450, 461-462 (1929).



Since the identity of the parties was sufficiently established by competent proof, this Court is convinced that respondent has complied with his duty in the notarization of the irrevocable power of attorney.

Considering, however, that there is clear preponderance of evidence that respondent failed to discharge his duty to inform the CA of his client's death within the period provided by the Rules of Court and to file an Appellee's Brief, a REPRIMAND is proper taking into consideration his explanation that complainant refused to furnish him his client's death certificate.


**WHEREFORE**, respondent Atty. Raul O. Tolentino is hereby **REPRIMANDED** for failing to observe his duty to the Court and **REMINDED** that a repetition of the same or similar acts will be dealt with more severely.

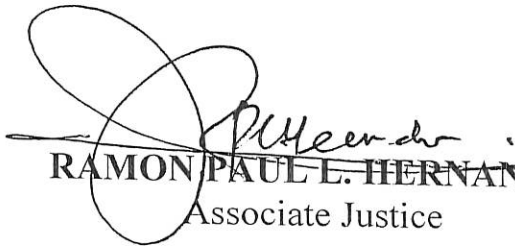
**SO ORDERED.**

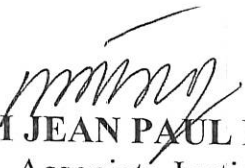


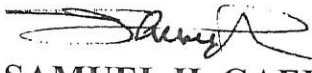
**EDGARDO L. DELOS SANTOS**  
Associate Justice

**WE CONCUR:**

  
**ESTELA M. PERLAS-BERNABE**  
Senior Associate Justice  
Chairperson

  
**RAMON PAUL E. HERNANDO**  
Associate Justice

  
**HENRI JEAN PAUL B. INTING**  
Associate Justice

  
**SAMUEL H. GAERLAN**  
Associate Justice

