



Republic of the Philippines
 Supreme Court
 Manila

SPECIAL FIRST DIVISION

TOMAS P. TAN, JR.,
Complainant,

A.C. No. 9000

Present:

- versus -

LEONARDO-DE CASTRO,
 BERSAMIN,
 DEL CASTILLO,
 LEONEN, *and*
 MARTIRES, *JJ.*

ATTY. HAIDE V. GUMBA,
Respondent.

Promulgated: **JAN 10 2018**
 Present:

X-----X

DECISION

DEL CASTILLO, J.:

This case is an offshoot of the administrative Complaint¹ filed by Tomas P. Tan, Jr. (complainant) against Atty. Haide V. Gumba (respondent), and for which respondent was suspended from the practice of law for six months. The issues now ripe for resolution are: a) whether respondent disobeyed a lawful order of the Court by not abiding by the order of her suspension; and b) whether respondent deserves a stiffer penalty for such violation.

Factual Antecedents

According to complainant, in August 1999, respondent obtained from him a ₱350,000.00 loan with 12% interest *per annum*. Incidental thereto, respondent executed in favor of complainant an undated Deed of Absolute Sale² over a 105-square meter lot located in Naga City, and covered by Transfer Certificate of Title No. 2055³ under the name of respondent's father, Nicasio Vista. Attached to said Deed was a Special Power of Attorney⁴ (SPA) executed by respondent's parents authorizing her to apply for a loan with a bank to be secured by the subject property. Complainant and respondent purportedly agreed that if the latter failed to pay the loan in or before August 2000, complainant may register the Deed of

¹ *Rollo*, pp. 16-19.

² *Id.* at 23-24.

³ *Id.* at 20-22.

⁴ *Id.* at 25.

Absolute Sale with the Register of Deeds (RD).⁵

Respondent failed to pay her loan when it fell due. And despite repeated demands, she failed to settle her obligation. Complainant attempted to register the Deed of Absolute Sale with the RD of Naga City but to no avail because the aforesaid SPA only covered the authority of respondent to mortgage the property to a bank, and not to sell it.⁶

Complainant argued that if not for respondent's misrepresentation, he would not have approved her loan. He added that respondent committed dishonesty, and used her skill as a lawyer and her moral ascendancy over him in securing the loan. Thus, he prayed that respondent be sanctioned for her infraction.⁷

In his Commissioner's Report⁸ dated February 9, 2009, Commissioner Jose I. de la Rama, Jr. (Commissioner de la Rama) faulted respondent for failing to file an answer, and participate in the mandatory conference. He further declared that the SPA specifically authorized respondent to mortgage the property with a bank. He stressed that for selling the property, and not just mortgaging it to complainant, who was not even a bank, respondent acted beyond her authority. Having done so, she committed gross violation of the Lawyer's Oath as well as Canon 1,⁹ Rule 1.01,¹⁰ and Canon 7¹¹ of the Code of Professional Responsibility. As such, he recommended that respondent be suspended from the practice of law for one year.

In the Resolution No. XIX-2010-446¹² dated August 28, 2010, the Integrated Bar of the Philippines – Board of Governors (IBP-BOG) resolved to adopt and approve the Report and Recommendation of Commissioner de la Rama.

Action of the Supreme Court

Thereafter, the Court issued a Resolution¹³ dated October 5, 2011, which sustained the findings and conclusion of the IBP. The Court nonetheless found the reduction of the penalty proper, pursuant to its sound judicial discretion and on the

⁵ Id. at 16.

⁶ Id. at 17.

⁷ Id. at 17-18.

⁸ Id. at 72-77.

⁹ CANON 1 — A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and for legal processes.

¹⁰ Rule 1.01. A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

¹¹ Canon 7 — A lawyer shall at all times uphold the integrity and dignity of the legal profession, and support the activities of the integrated bar.

¹² *Rollo*, p. 71.

¹³ Id. at 82-87; penned by Associate Justice Martin S. Villarama, Jr. and concurred in by then Chief Justice Renato C. Corona and Associate Justices Teresita J. Leonardo-de Castro, Lucas P. Bersamin and Mariano C. del Castillo.

facts of the case. Accordingly, it suspended respondent from the practice of law for six months, effective immediately, with a warning that a repetition of same or similar act will be dealt with more severely.

On March 14, 2012, the Court resolved to serve anew the October 5, 2011 Resolution upon respondent because its previous copy sent to her was returned unserved.¹⁴ In its August 13, 2012 Resolution,¹⁵ the Court considered the October 5, 2011 Resolution to have been served upon respondent after the March 14, 2012 Resolution was also returned unserved. In the same resolution, the Court also denied with finality respondent's motion for reconsideration on the October 5, 2011 Resolution.

Subsequently, Judge Margaret N. Armea (Judge Armea) of the Municipal Trial Court in Cities of Naga City, Branch 2 wrote a letter¹⁶ inquiring from the Office of the Court Administrator (OCA) whether respondent could continue representing her clients and appear in courts. She also asked the OCA if the decision relating to respondent's suspension, which was downloaded from the internet, constitutes sufficient notice to disqualify her to appear in courts for the period of her suspension.

According to Judge Armea, her inquiry arose because respondent represented a party in a case pending in her court; and, the counsel of the opposing party called Judge Armea's attention regarding the legal standing of respondent to appear as counsel. Judge Armea added that respondent denied that she was suspended to practice law since she (respondent) had not yet received a copy of the Court's resolution on the matter.

In her Answer/Comment¹⁷ to the query of Judge Armea, respondent countered that by reason of such downloaded decision, Judge Armea and Executive Judge Pablo Cabillan Formaran III (Judge Formaran III) of the Regional Trial Court (RTC) of Naga City disallowed her appearance in their courts. She insisted that service of any pleading or judgment cannot be made through the internet. She further claimed that she had not received an authentic copy of the Court's October 5, 2011 Resolution.

On January 22, 2013, the Office of the Bar Confidant (OBC) referred the October 5, 2011 Resolution to the OCA for circulation to all courts.¹⁸ In response, on January 30, 2013, the OCA issued OCA Circular No. 14-2013¹⁹ addressed to

¹⁴ Id. at 96.

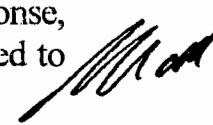
¹⁵ Id. at 98.

¹⁶ Id. at 103.

¹⁷ Id. at 119-125.

¹⁸ Id. at 99.

¹⁹ Id. at 176.



the courts,²⁰ the Office of the Chief State Prosecutor (CSP), Public Attorney's Office (PAO), and the IBP informing them of the October 5, 2011 and August 13, 2012 Resolutions of the Court.

IBP's Report and Recommendation

Meanwhile, in its Notice of Resolution No. XX-2013-359²¹ dated March 21, 2013, the IBP-BOG resolved to adopt and approve the Report and Recommendation²² of Commissioner Oliver A. Cachapero (Commissioner Cachapero) to dismiss the complaint against respondent. According to Commissioner Cachapero, there is no rule allowing the service of judgments through the internet; and, Judge Arnea and Judge Formaran III acted ahead of time when they implemented the suspension of respondent even before the actual service upon her of the resolution concerning her suspension.

Statement and Report of the OBC

In its November 22, 2013 Statement,²³ the OBC stressed that respondent received the August 13, 2012 Resolution (denying her motion for reconsideration on the October 5, 2011 Resolution) on November 12, 2012 per Registry Return Receipt No. 53365. Thus, the effectivity of respondent's suspension was from November 12, 2012 until May 12, 2013. The OBC also pointed out that suspension is not automatically lifted by mere lapse of the period of suspension. It is necessary that an order be issued by the Court lifting the suspension to enable the concerned lawyer to resume practice of law.

The OBC further maintained in its November 27, 2013 Report²⁴ that respondent has no authority to practice law and appear in court as counsel during her suspension, and until such time that the Court has lifted the order of her suspension. Thus, the OBC made these recommendations:

WHEREFORE, *in the light of the foregoing premises*, it is respectfully recommended that:

1. Respondent be REQUIRED to file a sworn statement with motion to lift order of her suspension, attaching therewith certifications from the Office of the Executive Judge of the court where she practices [h]er profession and IBP Local Chapter of which she is affiliated, that she has ceased and desisted from the practice of law from 12 November 2012 to 12 May 2013, immediately; and

²⁰ The Court of Appeals, Sandiganbayan, Court of Tax Appeals, Regional Trial Courts, Shari'a District Courts, Metropolitan Trial Courts, Municipal Trial Courts, Municipal Circuit Trial Courts, Shari'a Circuit Courts.

²¹ Id. at 187.

²² Id. at 188-192.

²³ Id. at 179-180.

²⁴ Id. at 200-201.

2. The IBP be REQUIRED to EXPLAIN within 72 hours why they should not be sanctioned for disciplinary action for issuing said Notice of Resolution No. XX-2013-359, dated 21 March 2013, purportedly dismissing this case for lack of merit.²⁵

On February 19, 2014, the Court noted²⁶ the OBC Report, and directed respondent to comply with the guidelines relating to the lifting of the order of her suspension as enunciated in *Maniago v. Atty. De Dios*.²⁷

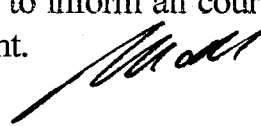
Upon the request of respondent, on December 2, 2014, the OBC issued a Certification,²⁸ which stated that respondent had been ordered suspended from the practice of law for six months, and as of the issuance of said certification, the order of her suspension had not yet been lifted.

Complaint against the OCA, the OBC and Atty. Paraiso

On February 6, 2015, respondent filed with the RTC a verified Complaint²⁹ for nullity of clearance, damages, and preliminary injunction with urgent prayer for a temporary restraining order against the OCA, the OBC, and Atty. Nelson P. Paraiso (Atty. Paraiso). The case was docketed as Civil Case No. 2015-0007.

Essentially, respondent accused the OCA and the OBC of suspending her from the practice of law even if the administrative case against her was still pending with the IBP. She likewise faulted the OBC for requiring her to submit a clearance from its office before she resumes her practice of law after the suspension. In turn, she argued that Atty. Paraiso benefited from this supposed “bogus suspension” by publicly announcing the disqualification of respondent to practice law.

In its Answer,³⁰ the OCA argued that the RTC had no jurisdiction over the action, which seeks reversal, modification or enjoinder of a directive of the Court. The OCA also stressed that respondent should raise such matter by filing a motion for reconsideration in the administrative case, instead of filing a complaint with the RTC. It also stated that the issuance of OCA Circular No. 14-2013 was in compliance with the Court’s directive to inform all courts, the CSP, the PAO, and the IBP of the suspension of respondent.



²⁵ Id. at 201.

²⁶ Id. at 203.

²⁷ 631 Phil. 139 (2010).

²⁸ *Rollo*, p. 264.

²⁹ Id. at 231-239.

³⁰ Id. at 266-271.

For its part, the OBC declared in a Report³¹ dated March 24, 2015 that during and after the period of her suspension, without the same having been lifted, respondent filed pleadings and appeared in courts in the following cases:

x x x (1) Civil Case No. 2013-0106 (Romy Fay Gumba v. The City Assessor of Naga City, et. al.), (2) Civil Case No. RTC 2006-0063 (Sps. Jaime M. Kalaw et. al. v. Fausto David, et. al.), (3) Other Spec. Proc. No. RTC 2012-0019 (Petition for Reconstitution of Transfer Certificate of Title No. 21128 of the Registry of Deeds of Naga City v. Danilo O. Laborado).³²

The OBC likewise confirmed that as of the time it issued the March 24, 2015 Report, the Court had not yet lifted the order of suspension against respondent. The OBC opined that for failing to comply with the order of her suspension, respondent deliberately refused to obey a lawful order of the Court. Thus, it recommended that a stiffer penalty be imposed against respondent.

On June 4, 2015, the OBC reported that the RTC dismissed Civil Case No. 2015-0007 for lack of jurisdiction, and pending resolution was respondent's motion for reconsideration.³³

Issue

Is respondent administratively liable for engaging in the practice of law during the period of her suspension and prior to an order of the Court lifting such suspension?

Our Ruling

Time and again, the Court reminds the bench and bar "that the practice of law is *not* a right but a mere privilege [subject] to the inherent regulatory power of the [Court]."³⁴ It is a "privilege burdened with conditions."³⁵ As such, lawyers must comply with its rigid standards, which include mental fitness, maintenance of highest level of morality, and full compliance with the rules of the legal profession.³⁶

With regard to suspension to practice law, in *Maniago v. Atty. De Dios*,³⁷ the Court laid down the guidelines for the lifting of an order of suspension, to wit:

³¹ Id. at 272-273.

³² Id. at 272.

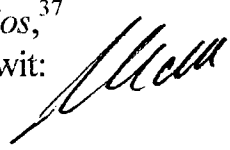
³³ Id. at 274.

³⁴ *Maniago v. Atty. De Dios*, supra note 27 at 145.

³⁵ *Lingan v. Atty. Calubaquib*, 737 Phil. 191, 209 (2014).

³⁶ Id.

³⁷ Supra note 27.




- 1) After a finding that respondent lawyer must be suspended from the practice of law, the Court shall render a decision imposing the penalty;
- 2) Unless the Court explicitly states that the decision is immediately executory upon receipt thereof, respondent has 15 days within which to file a motion for reconsideration thereof. The denial of said motion shall render the decision final and executory;
- 3) Upon the expiration of the period of suspension, respondent shall file a Sworn Statement with the Court, through the Office of the Bar Confidant, stating therein that he or she has desisted from the practice of law and has not appeared in any court during the period of his or her suspension;
- 4) Copies of the Sworn Statement shall be furnished to the Local Chapter of the IBP and to the Executive Judge of the courts where respondent has pending cases handled by him or her, and/or where he or she has appeared as counsel;
- 5) The Sworn Statement shall be considered as proof of respondent's compliance with the order of suspension;
- 6) Any finding or report contrary to the statements made by the lawyer under oath shall be a ground for the imposition of a more severe punishment, or disbarment, as may be warranted.³⁸

Pursuant to these guidelines, in this case, the Court issued a Resolution dated October 5, 2011 suspending respondent from the practice of law for six months effective immediately. Respondent filed her motion for reconsideration. And, on November 12, 2012, she received the notice of the denial of such motion per Registry Return Receipt No. 53365.

While, indeed, service of a judgment or resolution must be done only personally or by registered mail,³⁹ and that mere showing of a downloaded copy of the October 5, 2011 Resolution to respondent is not a valid service, the fact, however, that respondent was duly informed of her suspension remains un rebutted. Again, as stated above, she filed a motion for reconsideration on the October 5, 2011 Resolution, and the Court duly notified her of the denial of said motion. It thus follows that respondent's six months suspension commenced from the notice of the denial of her motion for reconsideration on November 12, 2012 until May 12, 2013.

In *Ibana-Andrade v. Atty. Paita-Moya*,⁴⁰ despite having received the Resolution anent her suspension, Atty. Paita-Moya continued to practice law. She filed pleadings and she appeared as counsel in courts. For which reason, the Court suspended her from the practice of law for six months in addition to her initial one month suspension, or a total of seven months.



³⁸ Id. at 145-146.

³⁹ RULES OF COURT, Rule 13, Section 9.

⁴⁰ 763 Phil. 687 (2015).

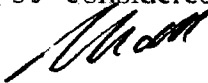
Too, in *Feliciano v. Atty. Bautista-Lozada*,⁴¹ respondent therein, Atty. Lozada, appeared and signed as counsel, for and in behalf of her husband, during the period of her suspension from the practice of law. For having done so, the Court ruled that she engaged in unauthorized practice of law. The Court did not give weight to Atty. Lozada's defense of good faith as she was very well aware that when she represented her husband, she was still serving her suspension order. The Court also noted that Atty. Lozada did not seek any clearance or clarification from the Court if she can represent her husband in court. In this regard, the Court suspended Atty. Lozada for six months for her willful disobedience to a lawful order of the Court.

Similarly, in this case, the Court notified respondent of her suspension. However, she continued to engage in the practice law by filing pleadings and appearing as counsel in courts during the period of her suspension.

It is common sense that when the Court orders the suspension of a lawyer from the practice of law, the lawyer must desist from performing all functions which require the application of legal knowledge within the period of his or her suspension.⁴² To stress, by practice of law, we refer to "any activity, in or out of court, which requires the application of law, legal procedure, knowledge, training, and experience. It includes performing acts which are characteristic of the legal profession, or rendering any kind of service which requires the use in any degree of legal knowledge or skill."⁴³ In fine, it will amount to unauthorized practice, and a violation of a lawful order of the Court if a suspended lawyer engages in the practice of law during the pendency of his or her suspension.⁴⁴

As also stressed by the OBC in its March 24, 2015 Report, during and even after the period of her suspension and without filing a sworn statement for the lifting of her suspension, respondent signed pleadings and appeared in courts as counsel. Clearly, such acts of respondent are in violation of the order of her suspension to practice law.

Moreover, the lifting of a suspension order is not automatic. It is necessary that there is an order from the Court lifting the suspension of a lawyer to practice law. To note, in *Maniago*, the Court explicitly stated that a suspended lawyer shall, upon the expiration of one's suspension, file a sworn statement with the Court, and that such statement shall be considered proof of the lawyer's compliance with the order of suspension.



⁴¹ 755 Phil. 349 (2015).

⁴² *Feliciano v. Atty. Bautista-Lozada*, id. at 354.

⁴³ *Eustaquio v. Navales*, A.C. No. 10465, June 8, 2016, 792 SCRA 377, 384.

⁴⁴ *Feliciano v. Atty. Bautista-Lozada*, supra note 41 at 354-355.

In this case, on February 19, 2014, the Court directed respondent to comply with the guidelines for the lifting of the suspension order against her by filing a sworn statement on the matter. However, respondent did not comply. Instead, she filed a complaint (Civil Case No. 2015-0007) against the OCA, the OBC and a certain Atty. Paraiso with the RTC. For having done so, respondent violated a lawful order of the Court, that is, to comply with the guidelines for the lifting of the order of suspension against her.

To recapitulate, respondent's violation of the lawful order of the Court is two-fold: 1) she filed pleadings and appeared in court as counsel during the period of her suspension, and prior to the lifting of such order of her suspension; and 2) she did not comply with the Court's directive for her to file a sworn statement in compliance with the guidelines for the lifting of the suspension order.

Under Section 27,⁴⁵ Rule 138 of the Rules of Court, a member of the bar may be disbarred or suspended from practice of law for willful disobedience of any lawful order of a superior court, among other grounds. Here, respondent willfully disobeyed the Court's lawful orders by failing to comply with the order of her suspension, and to the Court's directive to observe the guidelines for the lifting thereof. Pursuant to prevailing jurisprudence, the suspension for six (6) months from the practice of law against respondent is in order.⁴⁶

WHEREFORE, Atty. Haide V. Gumba is hereby **SUSPENDED** from the practice of law for an additional period of six (6) months (from her original six (6) months suspension) and **WARNED** that a repetition of the same or similar offense will be dealt with more severely.

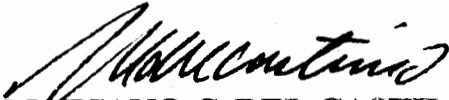
Atty. Haide V. Gumba is **DIRECTED** to inform the Court of the date of her receipt of this Decision, to determine the reckoning point when her suspension shall take effect.

Let copies of this Decision be furnished all courts, the Office of the Bar Confidant and the Integrated Bar of the Philippines for their information and guidance. The Office of the Bar Confidant is **DIRECTED** to append a copy of this Decision to the record of respondent as member of the Bar.

⁴⁵ Section 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 wilful disobedience of any lawful order of a superior court, or for corruptly or wilfully appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.

⁴⁶ *Paras v. Paras*, A.C. No. 5333, March 13, 2017.

SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:


TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Chairperson


LUCAS R. BERSAMIN
Associate Justice


MARVIC M.V.F. LEONEN
Associate Justice


SAMUEL R. MARTIRES
Associate Justice