



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

LETECIA G. SIAO,

Complainant,

A.C. No. 10890

Present:

PERLAS-BERNABE, S.A.J.,
Chairperson,

HERNANDO,
INTING,
DELOS SANTOS, and
GAERLAN,* JJ.

- versus -

ATTY. BAYANI S. ATUP,

Respondent.

Promulgated:

01 JUL 2020

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RESOLUTION

INTING, J.:

This administrative case is rooted on the Complaint¹ dated July 18, 2015 filed by Letecia G. Siao (Letecia) against Atty. Bayani S. Atup (Atty. Atup) before the Court for alleged violations of the Lawyer's Oath and Section 16, Rule 3 of the Rules of Court.

In her Complaint, Letecia alleged that Atty. Atup had appended a falsified Special Power of Attorney (SPA) purportedly executed in 1999 by the latter's client, Gabriel Yap, Sr. (Gabriel), to the Motion for Reconsideration dated November 15, 2013 that he filed before the Court of Appeals (CA) in the case of "Cebu South Memorial Garden, Gabriel Yap, Sr., et al. v. Letecia Siao, et al.," docketed as CA-G.R. CV No. 02037.² Letecia also asserted that Atty. Atup had failed to formally inform the CA that Gabriel had already passed away within 30 days from such fact of death, in violation of Section 16, Rule 3 of the Rules of Court.³

* Designated additional member per Special Order No. 2780 dated May 11, 2020.

¹ Rollo, pp. 1-9.

² *Id.* at 2, 5.

³ *Id.* at 6.

In his defense, Atty. Atup argued that Letecia had failed to substantiate her allegation that the signature of Gabriel appearing on the SPA had been forged. He explained that the variation in Gabriel's signatures as appearing on a contract he signed in 1997 and on the SPA was not sufficient basis to conclude that the SPA was a forgery. Atty. Atup also pointed out that the SPA was a notarized document which enjoyed the presumption of regularity and validity.⁴ While Atty. Atup admitted that there was a delay in informing the CA of Gabriel's fact of death, he claimed that such delay did not prejudice Letecia in any way that would warrant a disciplinary sanction against him.⁵

The Report and Recommendation of the Investigating Commissioner

In his Report and Recommendation⁶ dated March 5, 2018, Investigating Commissioner Jose Villanueva Cabrera (Investigating Commissioner) recommended that Atty. Atup be suspended from the practice of law for a period of one year⁷ for having deliberately violated Section 16, Rule 3 of the Rules of Court,⁸ viz.:

Based on the foregoing motion for reconsideration, the Respondent is fully aware that his client, Gabriel Yap, Sr. was already dead, having died on May 31, 2013. Despite his knowledge of the fact of death, Respondent still representation in the title of the pleading, the first paragraph of his motion that he is representing a client who was already dead. Respondent even indicated in the signature portion of the pleading that he is appearing as counsel for Gabriel Yap, Sr., a party who was already dead. x x x⁹

Nevertheless, the Investigating Commissioner found no factual and legal bases to hold Atty. Atup liable for malpractice and gross misconduct for the alleged falsification of the subject SPA, given that: (a) the SPA dated March 9, 1999 was a public document that carried with it the presumption of regularity and validity; (b) the mere difference in the signatures of Gabriel appearing on the SPA and other documents did not prove that the SPA was a forgery; and (c) the Integrated Bar of the Philippines (IBP) – Commission on Bar Discipline was not the proper forum to investigate and resolve Letecia's allegation that Gabriel's signature on the SPA had been falsified by Atty. Atup. Thus, the Investigating Commissioner recommended the dismissal of these charges against Atty. Atup.¹⁰

⁴ *Id.* at 261-262.

⁵ *Id.* at 264.

⁶ *Id.* at 362-378.

⁷ *Id.* at 378.

⁸ *Id.* at 375.

⁹ *Id.* at 374.

¹⁰ *Id.* at 370-371.

The Resolutions of the IBP Board of Governors

In the Notice of Resolution¹¹ dated June 29, 2018, the IBP Board of Governors resolved to adopt the findings of fact and recommendation of the Investigating Commissioner to impose against Atty. Atup the penalty of suspension from the practice of law for a period of one year.¹²

However, the IBP Board of Governors later reconsidered its ruling and reduced Atty. Atup's period of suspension from one year to one month, in the absence of bad faith and based on the guidelines, per the Notice of Resolution¹³ dated May 28, 2019.

The Court's Ruling

After a careful examination of the records, the Court concurs with the findings and recommendations of the IBP Board of Governors.

Section 16, Rule 3 of the Rules of Court provides:

SEC. 16. *Death of a party; duty of counsel.* — Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with this duty shall be a ground for disciplinary action.

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 a guardian *ad litem* for the minor heirs.

The Court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice.

If no legal representative is named by the counsel for the deceased party, or if the one so named shall fail to appear within the specified period, the court may order the opposing party, within a specified time, to procure the appointment of an executor or administrator for the estate of the deceased and the latter shall immediately appear for and on behalf of the deceased. The court charges in procuring such appointment, if defrayed by the opposing party, may be recovered as costs.

¹¹ *Id.* at 360-361.

¹² *Id.* at 360.

¹³ *Id.* at 430-431.

The duty of counsel under this provision is two-fold: *first*, the counsel must inform the court within 30 days after the death of his client of such fact of death; and *second*, to give the court the names and addresses of the deceased litigant's legal representative or representatives. This is the only representation that a counsel can undertake after his client's death as the fact of death essentially terminates the lawyer-client relationship that they had with each other.¹⁴

In this case, it is undisputed that Atty. Atup filed a Motion for Reconsideration¹⁵ in behalf of his deceased client before the CA in the case of *Cebu South Memorial Garden, et al. v. Letecia Siao, et al.*, docketed as CA-G.R. CV No. 02037, in which he informally notified the CA of his client's death as quoted below:

Considering that Gabriel Yap, Sr. has already died as evidenced by his death certificate (Annex C), all interest of the late Gabriel Yap, Sr. by operation of law is conveyed to his heirs by right of succession, which in this case are Gilbert Yap and Gabriel Yap, Jr.

Being the heir and successors-in-interest of the late Gabriel Yap, Sr., the authority put in question is put to rest as the right to prosecute the claim of plaintiff Gabriel Yap, Sr. is now a right of Gilbert Yap.¹⁶

The Court agrees with the IBP that Atty. Atup continued to represent Gabriel by filing the motion before the CA despite full knowledge of the latter's death on May 31, 2013, in direct violation of Section 16, Rule 3 of the Rules of Court. Evidently, Atty. Atup had failed to properly notify the CA of Gabriel's death within the specified period and to give the CA the names and addresses of Gabriel's legal representatives. Although it is true that Atty. Atup stated in the motion that Gabriel was survived by his heirs, Gilbert Yap and Gabriel Yap, Jr., there was no mention of Gabriel's widow, Mrs. Basilia Yap, or whether an administrator or executor of Gabriel's estate had already been appointed who could be substituted in the case.

At this juncture, the Court emphasizes that the substitution of a deceased litigant is not automatic as the legal representative or representatives identified by the counsel are required to first appear before the court, which, in turn, will determine who may be allowed to be substituted for the deceased party. To illustrate, in the case of *Judge Sumaljag v. Sps. Literato, et al.*¹⁷ (*Judge Sumaljag*), the Court ruled that "the lower court and the CA were legally correct in not giving effect to counsel's suggested substitute" as he was not one of those allowed by the

¹⁴ *Judge Sumaljag v. Sps. Literato, et al.*, 578 Phil. 48, 56 (2008). Citations omitted.

¹⁵ *Rollo*, pp. 10-27.

¹⁶ *Id.* at 18-19.

¹⁷ *Judge Sumaljag v. Sps. Literato, et al.*, *supra* note 14.

Rules to be a substitute.¹⁸ Suffice it to say, the counsel's duty to give the court the names and addresses of the deceased litigant's legal representative or representatives is merely the first step in the proper substitution of parties in a given case.

Interestingly, Atty. Atup cited *Judge Sumaljag* as part of his defense, claiming that in said case, the counsel, too, had belatedly notified the court of the fact of death of his client, but was not found to have violated Section 16, Rule 3 of the Rules of Court.¹⁹ Unfortunately, Atty. Atup's case is markedly different from the circumstances in *Judge Sumaljag* for in that case, the counsel actually filed a notice of death and substitution of party with the court. Moreover, the main issue in *Judge Sumaljag* was not the belated filing of the notice of death but the proper substitution of the deceased litigant. Here, the issue boils down to whether Atty. Atup had effectively informed the CA of his client's death as required by the Rules of Court.

As for the issue on falsification, it is settled that these allegations should be first established and determined in an appropriate civil or criminal proceeding "for it is only in such proceedings that the last word on the falsity or forgery can be uttered by a court of law with the legal competence to do so."²⁰ Simply put, this disbarment proceeding is not the proper forum to resolve this matter as the sole issue to be addressed in this case is whether Atty. Atup is morally fit to remain a member of the Philippine Bar.²¹ Besides, the subject SPA is a notarized document which "has in its favor the presumption of regularity, and to overcome this presumed regularity of its execution, whoever alleges the contrary should present evidence that is clear, convincing and more than merely preponderant."²² This Letecia failed to do.

Based on these considerations, the Court finds Atty. Atup guilty of violating Canon 1 and Rule 10.03, Canon 10 of the Code of Professional Responsibility which provide, among others, that a lawyer shall "promote respect for law and legal processes," and "observe the rules of procedure and shall not misuse them to defeat the ends of justice." Thus, the Court deems the penalty of suspension from the practice of law for a period of one month to be commensurate with his transgressions.

¹⁸ *Id.* at. 58

¹⁹ *Rollo*, p. 66.

²⁰ *Flores-Salado, et al. v. Atty. Villanueva*, 796 Phil. 40, 47 (2016).

²¹ *Id.*

²² *Id.* at 48, citing *Spouses Palada v. Solidbank Corporation, et al.*, 668 Phil. 172, 179 (2011).


WHEREFORE, the Court finds respondent Atty. Bayani S. Atup **GUILTY** of violating Canon 1 and Rule 10.03, Canon 10 of the Code of Professional Responsibility, and hereby **SUSPENDS** him from the practice of law for a period of one month. He is likewise **STERNLY WARNED** that a repetition of the same or similar acts will be dealt with more severely.

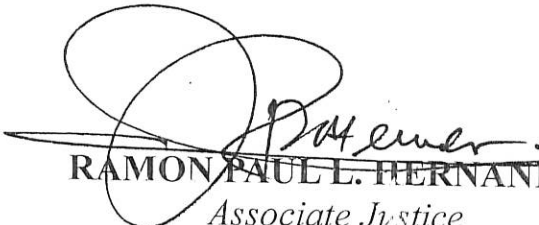
Let copies of this Resolution be furnished the Office of the Bar Confidant to be appended to respondent Atty. Bayani S. Atup's personal record, and the Office of the Court Administrator and the Integrated Bar of the Philippines for their information and guidance.

SO ORDERED.



HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson


RAMON PAUL L. HERNANDO
Associate Justice


EDGARDO L. DELOS SANTOS
Associate Justice


SAMUEL H. GAERLAN
Associate Justice

