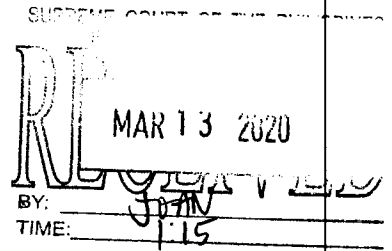




Republic of the Philippines
Supreme Court
Manila



THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated January 15, 2020, which reads as follows:

“A.C. No. 12638 [formerly CBD Case No. 15-4537] (*Leigh David Parker v. Atty. Jonathan J. De Paz*). – The instant disbarment case¹ was filed by complainant Leigh David Parker (complainant) against Atty. Jonathan J. De Paz (respondent) for allegedly filing a groundless, false, and unlawful suit for his client, Jose Gavino E. Unchuan (Jose). The alleged suit pertains to a petition for the issuance of a temporary and permanent protection order.

Facts of the Case

Respondent is the counsel of Jose in a petition for the issuance of a temporary and permanent protection order (second TPO), against complainant entitled, “*Jose Gavino E. Unchuan for and in behalf of his children: Eduardo M. Unchuan, Ysabella Rose M. Unchuan, and Santiago Jose M. Unchuan v. Leigh David Parker*” docketed as SP. Proc. No. 20412-CEB, and is pending before the Regional Trial Court (RTC) of Cebu City, Branch 22.²

The disbarment complaint alleged that respondent filed the petition for the second TPO for the sole purpose of harassing the victims in the Violence Against Women and Children (VAWC) case covered by a temporary protection order (TPO) under Republic Act 9262 entitled, “Anti-Violence Against Women and their Children Act of 2004,” otherwise known as the VAWC Law.³

The VAWC case stemmed from a marital issue between Spouses Maite Cristina C. Moraza-Unchuan (Maite) and her estranged husband Jose (collectively, Spouses) who were *de facto* separated since 2006. The Spouses have three minor children.⁴

¹ *Rollo*, Vol. I, pp. 1-17.

² *Id.* at 4.

³ *Id.* at 6.

⁴ *Id.* at 2-4.

Accordingly, a TPO⁵ was earlier issued by the RTC in the case entitled, “Maite Cristina C. Moraza-Unchuan for herself and for her children. Eduardo Manuel Moraza Unchuan, Ysabella Rose Moraza Unchuan and Santiago Jose Moraza Unchuan v. Jose Gavina E. Unchuan” docketed as SP Proc. No. 20230-CEB (first TPO). The first TPO prohibited the husband, Jose, from harassing, annoying, telephoning, contacting or otherwise communicating, in any form, with the children and their mother, either directly or indirectly.⁶ Respondent was not representing Jose in the VAWC case.

While the first TPO was still subsisting, respondent, acting on behalf of his client, Jose and children, filed the petition for the second TPO against complainant praying therein that his minor children be shielded from the repeated emotional and psychological abuse of complainant.⁷ In the petition, Jose alleged that complainant, the paramour of his wife, is living and residing in the family home, thereby causing emotional abuse and psychological violence upon the minor children, which seriously impaired the fundamental moralities of the minor children during their tender years.⁸ Acting on the said petition, the RTC issued a TPO against complainant.⁹ Because of this, the children filed an urgent motion to dissolve the second TPO alleging that they had “no knowledge in the filing of the said Petition, and could not therefore authorize Jose or anyone else to file the same.” Eventually, the second TPO dated January 15, 2015 issued by the RTC was temporarily recalled pending the hearing of the minor children’s *ad cautelam* very urgent omnibus motion.¹⁰

Accordingly, on the basis of the petition for the second TPO, a disbarment complaint docketed as IBP Case No. 15-4537 was filed by complainant against respondent. The complaint alleged that respondent’s act of filing the petition for the second TPO violated his oath of office and duties as a member of the bar by intentionally filing a groundless, false and unlawful suit for the purpose of harassing complainant, the minor children, and Maite. It added that by drafting, signing, and filing the petition, respondent facilitated and aided his client to violate the first TPO issued against his client, Jose, in blatant disregard of the law.¹¹

The complaint also said that respondent’s failure to obtain consent of the children before filing the petition for the second TPO, in accordance with the VAWC law, inflicted emotional, mental, and psychological abuse, and violence on the children. That respondent, without any authority to appear on

⁵ Id. at 5.

⁶ Id at 3.

⁷ Id. at 4-5.

⁸ Id at 308.

⁹ Id at 5.

¹⁰ Id. at 295.

¹¹ *Rollo*, Vol. II, p. 7.

behalf of the children, willfully appeared as their counsel by stating in the petition that the same was filed “for and in behalf” of them.¹²

It further argued that the petition deliberately omitted the fact of the issuance of the first TPO against Jose and it misled the Court into issuing the second TPO based on incomplete and false allegations.¹³ Respondent cannot feign ignorance that at the time of filing the petition for the second TPO before the RTC, there is an existing first TPO issued by the RTC because respondent, as counsel of Jose, had access to the records and was cognizant of the earlier TPO.

Moreover, complainant avers that under the Revised Rules of Procedure, respondent is bound to be truthful to the court and should have informed the Court of the existence of the first TPO.

In his answer, respondent countered that the allegations in the complaint pertain to the merits of the petition for the second TPO, which is being adjudicated before the RTC. He also averred that the petition for the second TPO did not violate the issuance of the first TPO because complainant is not a party to the petition for the first TPO. He further added that it is credulous to claim that the petition for the second TPO filed against complainant, a paramour shamelessly living at the family home, would constitute as a violation of the first TPO.¹⁴

In addition, respondent argued that he entered his appearance as counsel for Jose and not as counsel for Jose’s minor children. Complainant is confusing the authority of Jose, as the father of his minor children, to file the petition for the second TPO with respondent’s appearance as Jose’s counsel in court. As a lawyer, he merely represented his client’s cause and not his own cause.¹⁵ Respondent added that it is not for complainant to decide whether the petition for the second TPO is a groundless, false, or unlawful suit, but for the RTC where the petition is pending.¹⁶ Hence, the petition for disbarment should be dismissed outright as it is grounded on specious allegations and conjectures, which are meant to harass respondent for representing his client, Jose.

Recommendation of the Integrated Bar of the Philippines Commissioner and Board of Governors

On March 8, 2016, the Investigating Commissioner submitted a Report and Recommendation¹⁷ for the dismissal of the following charges:

I. Violation under Rule 1.01 and Rule 1.02, Canon 1 of the Code of Professional Responsibility (CPR) for filing the petition in flagrant

¹² Id. at 9.

¹³ Id at 15.

¹⁴ Id. at 301.

¹⁵ Id.

¹⁶ Id. at 302.

¹⁷ *Rollo*, Vol. II, pp. 2-16.

violation of the first TPO previously issued against respondent's client and for facilitating and aiding his client to violate the first TPO;
II. That respondent willfully appeared as an attorney for the minor children without any authority to do so;
III. That the filing of the petition violated respondent's oath as a lawyer that he shall not "wittingly or willingly promote or sue any groundless, false, or unlawful suit nor give aid nor consent to the same."

However, the Integrated Bar of the Philippines (IBP) Commission ruled that respondent was not fully candid with the court with respect to the charge under Rule 10.01 of the CPR for failure to fully disclose the issuance of the first TPO at the time of the filing of the petition for the second TPO.¹⁸

The Commission found that respondent notarized the verification and certificate of non-forum shopping of the petition for the second TPO, but failed to alert and caution his client-petitioner to disclose in the verification and certificate of non-forum shopping that a first TPO was already issued. As counsel and officer of the court, it was his obligation to do so.¹⁹

Furthermore, the Investigating Commissioner took note that the petition for the second TPO had an expressed allegation over the existence of the first TPO against respondent's client, and considered the same as partial compliance of the disclosure requirements, although it is short of fully disclosing that a first TPO was already issued at the time, even before the filing of the petition for the second TPO. With this, respondent failed to meet the standard of candor to the court.²⁰

The Investigating Commissioner found that there was no evidence that respondent was dubious, was previously accused or guilty of unethical behavior, or was found guilty of violating CPR. As such, considering the mitigating circumstance of partial disclosure, the penalty of censure and reprimand is imposed upon respondent, instead of suspension or disbarment.

In a Resolution²¹ dated 22 February 2018, the IBP Board of Governors adopted the report and recommendation of the Investigating Commissioner with modification, by imposing the penalty of reprimand against respondent.

Undaunted, complainant filed a Motion for Reconsideration²² before the IBP Board of Governors but the same was also denied in a Resolution²³ dated November 7, 2018 for having no new reasons or arguments to justify the reversal of the previous decision of the Board.

¹⁸ Id. at 15.

¹⁹ Id.

²⁰ Id.

²¹ Id. at 1.

²² Id. at 17-41.

²³ Id. at 123-124.

Ruling of the Court

The Court adopts the findings of the Investigating Commissioner and the recommendation of the IBP Board of Governors.

The Court already emphasized that “a case for disbarment or suspension is not meant to grant relief to a complainant as in a civil case, but is intended to cleanse the ranks of the legal profession of its undesirable members in order to protect the public and the courts.”²⁴ “Proceedings to discipline erring members of the bar are not instituted to protect and promote the public good only, but also to maintain the dignity of the profession by the weeding out of those who have proven themselves unworthy thereof.”²⁵

Here, there is no question that respondent’s professional role was limited to the preparation and filing of the petition for the issuance of the second TPO. On this basis, a TPO was issued against the complainant by the RTC.

Accordingly, the allegations in the complaint have no merit as respondent merely acted as counsel and advocate of his client. As such, respondent was faithfully discharging his duties by safeguarding the rights and interests of his client within the bounds of law. Hence, it cannot be regarded as wittingly or willingly promoting or suing any groundless, false, or unlawful suit. In addition, the specific acts alleged in the complaint neither constitute as unlawful, immoral, or deceitful conduct, nor does it abet an activity in defiance of the law or lessening the confidence of the legal system.

Nonetheless, the Court finds that respondent failed to exercise discretion and candor to the Court when he failed to disclose to the Court the issuance of the first TPO against his client. Although in his answer, respondent expressly alleged the petition for the issuance of first TPO, he failed to categorically state that the first TPO was in fact issued against his client. As the lawyer, who notarized the verification and the affidavit of non-forum shopping, he should have called the attention of the client to disclose the same. Although respondent failed to live up to the exacting ethical standards imposed upon the members of the Bar, We consider this as partial compliance to the requirements of the law.

The Court held that “[t]he supreme penalty of disbarment is meted out only in clear cases of misconduct that seriously affect the standing and character of the lawyer as an officer of the court. While we will not hesitate to remove an erring attorney from the esteemed brotherhood of lawyers, where the evidence calls for it, we will also not disbar him where a lesser penalty will suffice to accomplish the desired end.”²⁶

²⁴ *Alpajora v. Calayan*, A.C. No. 8208, January 10, 2018, 850 SCRA 99.

²⁵ *Munar v. Flores*, 207 Phil. 390, 393 (1983).

²⁶ *Kupers v. Atty. Hontanosas*, 605 Phil. 397, 404-405 (2009).

Likewise, in the case of *Ventura v. Samson*,²⁷ the Court reminded that “the power to disbar must be exercised with great caution, and only in a clear case of misconduct that seriously affects the standing and character of the lawyer as an officer of the Court and as a member of the bar.”²⁸ Hence, disbarment should never be imposed where a lesser penalty, such as temporary suspension, could accomplish the desired end of disciplining an erring lawyer.

Also, it is well-settled that “[t]he appropriate penalty to be imposed on an errant attorney involves the exercise of sound judicial discretion based on the facts of the case.”²⁹

Under the circumstances, there being no evidence that respondent acted with malice, nor that he previously found guilty of unethical behavior or violating the Code of Professional Responsibility, and considering that respondent partially disclosed the existence of the petition for the first TPO, the penalty of disbarment is too harsh.

WHEREFORE, the Court hereby **AFFIRMS** the February 22, 2018 and November 17, 2018 Resolutions of the Integrated Bar of the Philippines Board of Governors in CBD Case No. 15-4537 imposing the penalty of reprimand against Atty. Jonathan J. De Paz.

SO ORDERED.”

Very truly yours,

Misael Domingo C. Battung III
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grw 2/16/20

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²⁷ *Ventura v. Atty. Samson*, 699 Phil. 404 (2012).

²⁸ *Id.* at 418.

²⁹ *Judge Macias v. Atty. Selda*, 484 Phil. 10, 14 (2004).