



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

ATTY. CLODUALDO C. DE JESUS,
Complainant,

A.C. No. 7961

Present:

- versus -

CARPIO, J., Chairperson,
BRION,
DEL CASTILLO,
PEREZ, and
REYES,* JJ.

ATTY. ALICIA A. RISOS-VIDAL,
Respondent.

Promulgated:

MAR 19 2014 *HWCabale of Projecto*

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RESOLUTION

CARPIO, J.:

The Case

Before the Court is a disciplinary action filed by Atty. Clodualdo C. De Jesus (De Jesus) against Atty. Alicia A. Risos-Vidal (Risos-Vidal), then Director of the Integrated Bar of the Philippines, Commission on Bar Discipline (IBP-CBD), for gross misconduct, dishonesty and gross unethical behavior.

The Facts

The facts, as culled from the records, are as follows:

The present administrative case stemmed from Civil Case No. 99-93873, "*Anastacia F. Torres, Plaintiff, v. Susan F. Torres, Defendant*" (civil case), where De Jesus acted as counsel for the defendant Susan F. Torres (Torres).

* Designated acting member per Special Order No. 1650 dated 13 March 2014.

On 16 May 2006, the Regional Trial Court of Manila, Branch 28 (RTC) issued a decision approving the compromise agreement of the parties in the civil case. On 12 September 2007, De Jesus filed an omnibus motion (motion) to compel Torres to pay ₱4,000,000.00 as success fees and to sell some of Torres' properties, the certificates of title of which were still with De Jesus.

On 6 November 2007, Torres filed an administrative complaint¹ (complaint) against De Jesus before the IBP-CBD, alleging that De Jesus refused to return her certificates of title despite already paying attorney's fees amounting to ₱2,436,820.96.

On 7 November 2007, Risos-Vidal, then Director of IBP-CBD, issued an order² requiring De Jesus to answer the complaint filed by Torres.

In the meantime, Risos-Vidal became the new counsel of Torres in the civil case and she filed a comment³ dated 7 December 2007 to De Jesus' motion. The comment stated that De Jesus already received more than what he was entitled as attorney's fees, and still he refused to return Torres' certificates of title despite the termination of his services. On 20 December 2007, De Jesus filed his manifestation/compliance in the civil case, attaching Torres' certificates of title and conditioning their release upon the payment of his success fees.

In compliance with the order of Risos-Vidal, De Jesus filed his answer⁴ dated 18 January 2008 to the complaint. In his answer, De Jesus alleged that the subject matter of the complaint was sub judice because of the civil case, and Risos-Vidal took advantage of her position as Director of the IBP-CBD by actually preparing the complaint against him and by issuing an order the next day. On 6 March 2008, Torres filed her reply⁵ alleging that Atty. Solomon L. Condenuuevo (Condenuuevo) prepared her complaint against De Jesus, and not Risos-Vidal.

On 10 June 2008, Atty. Anthony L. Po (Po) and Atty. Jose Paolo C. Armas (Armas) entered their appearances as counsels for Torres in the complaint against De Jesus before the IBP-CBD. On 23 June 2008, Torres, through Po and Armas, filed a supplemental and/or amended complaint⁶ expounding the grounds for the complaint such as De Jesus' collecting of

¹ *Rollo*, pp. 20-22.

²Id. at 19. The order states that: "Pursuant to Rule 139-B, Sec. 6 of the Rules of Court, respondent is hereby ordered to submit his Answer to the attached copy of the complaint, duly verified, in six (6) copies, and furnish the complainants with a copy thereof, within fifteen (15) days from receipt of this Order. Failure to do so, the Commission will consider you in default and this case shall be heard ex-parte."

³ Id. at 225-228.

⁴ Id. at 23-28.

⁵ Id. at 96-98.

⁶ Id. at 204-207.

exorbitant attorney's fees, withholding of certificates of title and failing to file a case despite payment of his fees.

On 7 July 2008, De Jesus filed this present administrative complaint⁷ before the Court accusing Risos-Vidal of gross misconduct, dishonesty and gross unethical behavior under Rule 138, Section 27 of the Rules of Court.⁸ In this present administrative complaint, De Jesus alleged that Risos-Vidal actually prepared the following: (1) Torres' complaint against him; (2) reply; and (3) the supplemental and/or amended complaint, which were then filed before her IBP-CBD office. Risos-Vidal allegedly converted the issue in the civil case into an administrative complaint against him, and used Po and Armas in filing the supplemental and/or amended complaint. According to De Jesus, Risos-Vidal used her position as Director of IBP-CBD to enhance her private practice.

In a comment dated 20 October 2008,⁹ Risos-Vidal denied any participation in the complaint filed against De Jesus. Risos-Vidal alleged that De Jesus failed to present evidence to support his accusations, while she attached Torres' affidavit¹⁰ stating that: (1) Condenueno prepared her complaint against De Jesus; (2) even before retaining Risos-Vidal's services to defend her in the civil case, she already retained Condenueno to file her complaint against De Jesus; and (3) when she could no longer contact Condenueno, she asked Po, her previous lawyer, to assist her in preparing her supplemental and/or amended complaint.

In a reply dated 5 November 2008,¹¹ De Jesus alleged that there were similarities in contents, style and computer used between the pleadings submitted by Torres with the IBP-CBD and those filed by Risos-Vidal in the civil case. De Jesus also attacked Risos-Vidal's failure to adduce the sworn statements of Condenueno, Po and Armas to substantiate her denial. De Jesus likewise accused Torres of lying because Torres' affidavit stated that she engaged the services of Po on 18 June 2008, but Armas' acknowledgement receipt was dated 3 June 2008.

⁷ Id. at 1-10.

⁸Rules of Court, Rule 138, Section 27 provides: "***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 willful disobedience of any lawful order of a superior court, or for corruptly or willfully 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.***"

⁹ *Rollo*, pp. 135-144.

¹⁰ Id. at 177-180.

¹¹ Id. at 189-197.

In a Resolution dated 8 December 2008,¹² the Court, through the First Division, referred this case to the IBP for investigation, report and recommendation.

The IBP's Report and Recommendation

In an Order dated 13 March 2009,¹³ IBP Commissioner Salvador B. Hababag (Commissioner Hababag) stated that both De Jesus and Risos-Vidal appeared during the mandatory conference. They agreed that admissions and stipulations shall be limited to the pleadings already filed.

In a Report and Recommendation dated 6 July 2009,¹⁴ Commissioner Hababag recommended that the administrative complaint against Risos-Vidal be dismissed for lack of merit. He found that De Jesus had not only failed to show sufficient proof in support of his claim, but Risos-Vidal also rebutted his accusation with preponderant evidence.

In Resolution No. XIX-2010-177¹⁵ passed on 26 February 2010, the IBP Board of Governors adopted and approved Commissioner Hababag's report and recommendation, to wit:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering that the complaint lacks merit, the same is hereby **DISMISSED**.

N. B. CBD Director Alicia A. Risos-Vidal stepped out of the room and took no part on the discussion of this case considering that she is the respondent in this case.

In Resolution No. XIX-2011-122¹⁶ passed on 12 April 2011, the IBP Board of Governors likewise denied the motion for reconsideration filed by De Jesus since the Board found no cogent reason to reverse its initial findings.

Hence, De Jesus filed this petition.¹⁷

¹² Id. at 251.

¹³ Id. at 261.

¹⁴ Id. at 393-402.

¹⁵ Id. at 479.

¹⁶ Id. at 478.

¹⁷ Id. at 496-521. Petition for review on certiorari dated 10 August 2011.

The Ruling of the Court

We sustain the findings and recommendations of the IBP Board of Governors.

As a rule, an attorney enjoys the legal presumption that he is innocent of the charges against him until the contrary is proved.¹⁸ The burden of proof in disbarment and suspension proceedings always rests on the complainant.¹⁹ Considering the serious consequence of disbarment or suspension of a member of the Bar, this Court has consistently held that clear preponderant evidence is necessary to justify the imposition of administrative penalty.²⁰ Preponderance of evidence means that the evidence adduced by one side is, as a whole, superior to or has greater weight than that of the other.²¹ Thus, not only does the burden of proof that the respondent committed the act complained of rests on complainant, but the burden is not satisfied when complainant relies on mere assumptions and suspicions as evidence.²²

In the present case, we find that De Jesus failed to discharge the burden of proving Risos-Vidal's administrative liability by clear preponderance of evidence. Except for his allegations, De Jesus did not present any proof to substantiate his claim that Risos-Vidal used her position as Director of the IBP-CBD to enhance her law practice.

Under the Rules of the IBP-CBD, within two (2) days from receipt of the verified complaint, the IBP-CBD shall issue the required summons, stating that the respondent has fifteen (15) days from receipt within which to file his answer.²³ As Director of the IBP-CBD, Risos-Vidal merely complied with the rules when after the IBP-CBD received the complaint against De Jesus, she ordered him to answer the complaint. Risos-Vidal issued the order to De Jesus in a ministerial capacity, with no discretion, and even before she became the new counsel of Torres in the civil case.

The Rules of the IBP-CBD further provide that after receiving the answer of the respondent, the case shall be assigned by raffle to an Investigating Commissioner.²⁴ The Investigating Commissioner shall then set a mandatory conference, direct the submission of position papers,

¹⁸ *Joven v. Cruz*, A.C. No. 7686, 31 July 2013, 702 SCRA 545.

¹⁹ *Id.*; *Ylaya v. Gacott*, A.C. No. 6475, 30 January 2013, 689 SCRA 452; *Chan v. Go*, A.C. No. 7547, 4 September 2009, 598 SCRA 145; *Berbano v. Barcelona*, 457 Phil. 331 (2003).

²⁰ *Ylaya v. Gacott*, supra note 19; *Berbano v. Barcelona*, supra note 19.

²¹ *Ylaya v. Gacott*, supra note 19.

²² *Rubin v. Corpus-Cabochan*, OCA I.P.I. No. 11-3589-RTJ, 29 July 2013, 702 SCRA 330, citing *Dela Peña v. Huelma*, 530 Phil. 322 (2006).

²³ Rules of the Commission on Bar Discipline, Rule III, Section 3 provides: "Issuance of Summons. Within two (2) days from receipt of the verified complaint, the Commission shall issue the required summons, attaching thereto a copy of the complaint and supporting documents, if any. The summons shall indicate that the respondent has fifteen (15) days from receipt within which to file six (6) verified copies of his answer."

²⁴ Rules of the Commission on Bar Discipline, Rule IV, Section 2.

conduct clarification questioning, and submit his report and recommendation to the IBP Board of Governors.²⁵ Every case heard by the Investigating Commissioner shall thereafter be reviewed by the IBP Board of Governors.²⁶ In the present case, the Investigating Commissioner assigned to the complaint against De Jesus was not Risos-Vidal, but Commissioner Eduardo V. De Mesa.²⁷

Thus, Risos-Vidal could not have used her position as Director of IBP-CBD against De Jesus. The Rules further provide that it is the IBP Board of Governors, by majority vote of its total membership, which determines whether respondent should be recommended for suspension from the practice of law or for disbarment.²⁸

On the other hand, De Jesus insisted that Risos-Vidal acted as Torres' counsel in the complaint filed against him because the pleadings filed by Risos-Vidal in the civil case are similar "in contents, style, and computer used" with the complaint against him. Clearly, De Jesus' claims are anchored on mere assumptions and suspicions, and not backed by clear preponderant evidence necessary to justify the imposition of administrative penalty on Risos-Vidal.

De Jesus cannot likewise shift the burden of proof to Risos-Vidal by asking her to present the testimonies of Condenueno, Po and Armas. It is axiomatic that he who alleges an act has the onus of proving it.²⁹ If the burden of proof is not overcome, the respondent is under no obligation to prove her defense.³⁰

In any case, as found by the IBP, Risos-Vidal has, in her favor, the following evidence: (1) the supplemental and/or amended complaint signed by Torres, Po and Armas; (2) Torres' affidavit stating that Risos-Vidal had no participation in the complaint filed against De Jesus; (3) receipts that Torres paid Po and Armas their counsel fees; (4) the issuance of the order to De Jesus was part of Risos-Vidal's work as Director of IBP-CBD; and (5) the presumption of regularity in the performance of official duties.³¹

Considering that De Jesus failed to discharge the burden of proof to justify the imposition of administrative penalty against Risos-Vidal, we dismiss this complaint.

²⁵ Rules of the Commission on Bar Discipline, Rule V, Sections 1, 2, 3 and 7.

²⁶ Rules of Court, Rule 139-B, Section 12 (a).

²⁷ *Rollo*, pp. 4, 99 and 111.

²⁸ Rules of Court, Rule 139-B, Section 12 (b).

²⁹ *Chan v. Go*, supra note 19.

³⁰ *Anonymous v. Achas*, A.M. No. MTJ-11-1801, 27 February 2013, 692 SCRA 18, citing *Go v. Judge Achas*, 493 Phil. 343 (2005).

³¹ *Rollo*, p. 401.

WHEREFORE, we **DISMISS** the complaint against respondent Atty. Alicia A. Risos-Vidal for lack of merit.

SO ORDERED.

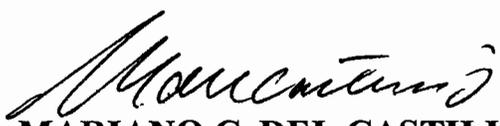


ANTONIO T. CARPIO
Associate Justice

WE CONCUR:



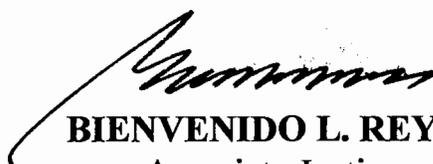
ARTURO D. BRION
Associate Justice



MARIANO C. DEL CASTILLO
Associate Justice



JOSE PORTUGAL PEREZ
Associate Justice



BIENVENIDO L. REYES
Associate Justice