

FIRST DIVISION

[A.C. No. 7035, July 13, 2020]

**PEDRO SALAZAR, COMPLAINANT, VS. ATTY. ARMAND DURAN,
RESPONDENT.**

R E S O L U T I O N

LOPEZ, J.:

This is an administrative complaint filed by Pedro Salazar against Atty. Armand Duran for unethical conduct, dishonesty, false testimony, violation of the lawyer's oath, and for acts inimical to his client.

Facts

In his Complaint-Affidavit,^[1] Pedro alleged that he engaged the services of Atty. Duran in a partition case involving the estate of his (Pedro) parents. Thereafter, Pedro and Atty. Duran executed two contracts for attorney's fees: one, a contract on contingent basis wherein 20% of any and all proceeds of the partition case will be paid to Atty. Duran;^[2] and second, a contract wherein the attorney's fees and acceptance fee were set at P50,000.00 each, subject to certain conditions.^[3]

Meantime, Pedro received a Land Bank of the Philippines (LBP) check^[4] in the amount of P339,854.50 and LBP bonds representing his share in the just compensation of his parent's property that was expropriated. With the money available, Pedro informed Atty. Duran that he will pay him the attorney's fees. At the behest of Atty. Duran, Pedro signed a waiver for the LBP bonds in his favor. However, when Pedro learned that the value of the LBP bonds was considerably higher than the attorney's fees stipulated in the two contracts, he asked Atty. Duran to return the excess but Atty. Duran refused. Pedro claimed that the value of the LBP bonds was P821,038.50, more or less.^[5]

On March 17, 1997, Pedro tried to cash the LBP check but Atty. Duran grabbed it from him and left. Pedro then learned that Atty. Duran deposited the check in his own account with Allied Bank. Further, Atty. Duran secured a loan from LBP and used the money value of the LBP bonds to pay off the loan.^[6] With these actuations of Atty. Duran, Pedro lost the trust and confidence in him and terminated his services.^[7]

Later, another property of Pedro's parents was expropriated. Since the partition case between the heirs was still pending, LBP required a court order for the release of the just compensation to the heirs. Pedro requested the assistance of a new lawyer, Atty. Gualberto C. Manlagñit, to file the necessary motion in the partition case. To Pedro's surprise, Atty. Duran intervened, claiming 20% of the just compensation due to Pedro. Eventually, the trial court ordered LBP to release Pedro's share but withheld 20% of it pending the determination of Atty. Duran's claim.^[8]

Pedro alleged that it was during the hearing on the motion that Atty. Duran committed false testimony. Atty. Duran testified that he signed the LBP check only as a witness, and that it was Pedro who received the money.^[9] However, on cross-examination, Atty. Duran stated that he deposited the check in his account with Allied Bank, withdrew some money, and gave it to Pedro.^[10]

Consequently, Pedro filed the instant complaint praying that Atty. Duran be administratively investigated for his unethical conduct, dishonesty, false testimony, and violation of the lawyer's oath.^[11]

In his Comment,^[12] Atty. Duran averred that the attorney's fees he received from Pedro were reasonable and that he was the victim who was betrayed by his client. He narrated that Pedro was one of the heirs of Soledad F. Salazar. Since the heirs, except for Pedro, had already appropriated for themselves substantial portions of the estate, Pedro sought assistance from him to obtain his rightful share. Pedro, however, could not afford the expenses of litigation. Thus, Atty. Duran agreed to advance all litigation expenses on the condition that the attorney's fees will be on a contingent basis equivalent to 20% of the value of Pedro's share in the estate.

Later, Atty. Duran learned that Pedro hired another lawyer to file motions to withdraw a total of P5,046,945.13 just compensation from LBP. Apparently, Pedro did this to avoid paying the 20% attorney's fees due to him under the contract. When Atty. Duran discovered this, he intervened and asked for the trial court to segregate 20% of Pedro's share in the just compensation as attorney's fees. It was during the hearing on the motion that he allegedly committed false testimony. Nevertheless, Atty. Duran averred that the false testimony charge was already dismissed.^[13]

On December 6, 2006, we referred the administrative complaint to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.^[14]

Proceedings in the IBP

In his Position Paper,^[15] Atty. Duran reiterated his comment to the complaint. He explained that the contingent fee contract contained an addendum allowing Pedro to pay attorney's fees on a non-contingent basis if he can secure a loan to finance the expenses of litigation.^[16] However, since Pedro failed to secure the loan, the contingent fee contract was implemented.

Atty. Duran admitted that he deposited the LBP check in his own account with Allied Bank but he withdrew P160,000.00^[17] and gave it to Pedro. Then, at his office, he gave P111,200.00 to Pedro after they agreed that he will be paid an additional amount of P67,800.00 as attorney's fees. With respect to the LBP bonds, Atty. Duran claimed that only P332,520.59 was assigned to him, to which he realized P243,467.32 after trading.

On April 24, 2009, the IBP Commission on Bar Discipline (IBP-CBD) issued its Report^[18] finding Atty. Duran's inconsistent statements on the witness stand reflective of his poor moral character and on his fitness to practice law. However, since Pedro did not suffer any prejudice as a result of Atty. Duran's acts, the IBP-CBD recommended that Atty. Duran be reprimanded with a stern warning that repetition of the same or similar acts shall be dealt with more severely.

As to the allegations of "check-grabbing" and that Atty. Duran forced Pedro to surrender the LBP bonds to him, the IBP-CBD found no evidence to support Pedro's claims. Likewise, the attorney's fees received by Atty. Duran under the first contract in the amount of P423,111.85 were reasonable under Canon 20^[19] of the Code of Professional Responsibility (CPR).

On May 14, 2011, the IBP Board of Governors passed a Resolution^[20] dismissing the charges of dishonesty, false testimony, and violation of the lawyer's oath against Atty. Duran, but reprimanded him for unethical conduct, viz.:

RESOLUTION NO. XIX-2011-189
Adm. Case No. 7035
Pedro Salazar v. Atty. Armand Duran

*RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, **with modification**, the Report and Recommendation of the Investigating Commissioner in 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, the charges of dishonesty, false testimony and violation of the lawyer's Oath against Respondent, are hereby **DISMISSED**. However, on the charge of unethical conduct, Atty. Armand Duran is hereby **REPRIMANDED** considering his conflicting declaration under oath, with the stern Warning that repetition of the same or similar acts shall be dealt with more severely.*^[21]

Pedro sought reconsideration,^[22] alleging a pattern of flawed behavior on Atty. Duran that is deserving of the penalty of disbarment. Pedro claimed that Atty. Duran previously defrauded another client in Naga City and that Atty. Duran fomented lawsuits to advance his financial interests.

On February 11, 2014, the IBP Board of Governors granted Pedro's motion and imposed upon Atty. Duran the penalty of suspension from the practice of law for three months:^[23]

RESOLUTON NO. XX-2014-16
Adm. Case No. 7035
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*RESOLVED to GRANT Complainant's Motion for Reconsideration except for the penalty. Thus, Resolution No. XIX-2011-189 dated May 14, 2011 is hereby **SET ASIDE** and Respondent is hereby **SUSPENDED from the practice of law for three (3) months** instead.*^[24]

On April 25, 2014, the IBP-CBD transmitted the pertinent records of the case to this Court.^[25]

Meantime, Atty. Duran filed a Motion to Set Aside Resolution No. XX-2014-16,^[26] which was transmitted by the IBP-CBD to the Office of the Bar Confidant in its Indorsement dated May 29, 2014.^[27] In his motion, Atty. Duran averred that the new charges in the motion for reconsideration must be reinvestigated properly and that he will be allowed to adduce his evidence to controvert the new charges.

On June 27, 2016, we referred Atty. Duran's motion to the IBP.^[28]

On November 28, 2017, the IBP Board of Governors passed a Resolution denying Atty. Duran's motion, viz.:^[29]

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RESOLVED to DENY the respondent's Motion for Reconsideration there being no new reason and/or new argument adduced to reverse the previous findings and decision of the Board of Governors.^[30]

Thereafter, the case was transmitted to this Court for review.^[31]

Issue

Whether Atty. Duran should be administratively liable for unethical conduct, dishonesty, false testimony, violation of the lawyer's oath, and for acts inimical to his client.

Ruling

First off, we emphasize that the dismissal of the criminal charge of false testimony against Atty. Duran has no bearing on the administrative complaint. Disbarment proceedings are *sui generis*; they belong to a class of their own and are distinct from that of civil or criminal actions.^[32]

We shall now discuss Atty. Duran's conduct as a lawyer.

In its Report, the IBP-CBD found Atty. Duran untruthful and unethical when he testified about his participation in the check. Atty. Duran stated that he signed in the check as a witness but his signature and account number were found at the back of the check indicating that complainant indorsed it to him. The IBP-CBP found Atty. Duran's claim of sudden recollection of the events that actually transpired too contrived and convenient to be worthy of belief. Atty. Duran could not have forgotten how he received a check for a substantial sum especially the argument that allegedly ensued between him and complainant on that day. Further, Atty. Duran himself filed the motion to segregate his supposed share in the just compensation. Hence, there was a presumption that he prepared for his testimony. For him not to remember the facts of his own case was, therefore, quite farfetched. Accordingly, the IBP reprimanded him for unethical conduct.

However, the IBP modified the penalty to suspension for three months after taking into consideration the new allegations of complainant in his motion for reconsideration. Complainant alleged that Atty. Duran previously defrauded another client and that he initiated lawsuits for personal gain.

We modify the recommendation of the IBP.

In all his dealings with his client and with the courts, every lawyer is expected to be honest, imbued with integrity, and trustworthy.^[33] Every lawyer is enjoined to obey the laws of the land, to refrain from doing any falsehood in or out of court or from consenting to the doing of any in court, and to conduct himself according to the best of his knowledge and discretion with all good fidelity to the courts and to his clients.

[34] These expectations, though high and demanding, are basic professional and ethical burdens of every member of the Philippine Bar, for they have been given full expression in the Lawyer's Oath that every lawyer of this country has taken upon admission as a *bona fide* member of the Law Profession.[35]

Canon 10, Rule 10.01 of the CPR echoes the Lawyer's Oath, viz.:

CANON 10 — A LAWYER OWES CANDOR, FAIRNESS AND GOOD FAITH TO THE COURT.

Rule 10.01 — A lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead, or allow the Court to be misled by any artifice.

Indeed, to all lawyers, honesty and trustworthiness have the highest value. In *Young v. Batuegas*,[36] we explained:

A lawyer must be a disciple of truth. He swore upon his admission to the Bar that he will "do no falsehood nor consent to the doing of any in court" and he shall "conduct himself as a lawyer according to the best of his knowledge and discretion with all good fidelity as well to the courts as to his clients." He should bear in mind that as an officer of the court his high vocation is to correctly inform the court upon the law and the facts of the case and to aid it in doing justice and arriving at correct conclusion. The courts, on the other hand, are entitled to expect only complete honesty from lawyers appearing and pleading before them. While a lawyer has the solemn duty to defend his client's rights and is expected to display the utmost zeal in defense of his client's cause, his conduct must never be at the expense of truth.

Thus, we penalized lawyers for withholding the true facts of the case with intent to mislead the court. In *Molina v. Atty. Magat*,[37] we suspended the respondent lawyer for **six months** for making untruthful statements on the existence of a similar case to mislead the court into dismissing the case due to double jeopardy. [38] Similarly, in *Coloma v. Ulep*,[39] we imposed the penalty of suspension from the practice of law for **six months** against the erring government lawyer who falsely testified in court. Meanwhile, in *Maligaya v. Atty. Doronilla, Jr.*,[40] the respondent lawyer stated untruthfully in open court that complainant had agreed to withdraw his lawsuits. His unethical conduct was compounded by his obstinate refusal to acknowledge the impropriety of his acts. We suspended him from the practice of law for **two months** after considering mitigating circumstances, *i.e.* he admitted during investigation the falsity of the statements he made, there was no material damage to complainant, and he was not previously charged with an administrative offense.

In the present case, Atty. Duran had been untruthful when he testified during the hearing on the motion to segregate 20% of complainant's share in the just compensation. At first, he claimed that his signature appearing at the back of the check was only as a witness and not an endorsee. Further, he feigned unawareness of the account number appearing below his own signature at the back of the check. It must be noted that under the Negotiable Instruments Law,[41] a signature on an instrument payable to order, such as a check, without additional words, constitutes an indorsement.[42]