

SECOND DIVISION

[A.C. No. 8451 (Formerly CBD Case No. 13-3982),
September 30, 2020]

**ATTY. ESTHER GERTRUDE D. BILIRAN,* COMPLAINANT, VS.
ATTY. DANILO A. BANTUGAN, RESPONDENT.**

DECISION

DELOS SANTOS, J.:

The Case

Before the Court is a Letter-Complaint^[1] dated August 24, 2009 filed by complainant Atty. Esther Gertrude D. Biliran^[2] (complainant) against respondent Atty. Danilo A. Bantugan (Atty. Bantugan) for violation of Rule 1.01 and Rule 7.03 of the Code of Professional Responsibility (CPR) for alleged misuse of funds and property. In a Report and Recommendation^[3] dated September 1, 2016, Investigating Commissioner Rico A. Limpingco (Investigating Commissioner) recommended the dismissal of the complaint without prejudice to its re-filing with sufficient evidence. In a Resolution^[4] dated March 1, 2017, the Integrated Bar of the Philippines-Board of Governors (IBP-BOG) reversed the findings of the Investigating Commissioner and recommended the penalty of suspension from the practice of law for two years.

The Facts

Complainant is a member of the IBP-Bohol Chapter (IBP-Bohol). On September 14, 2009, she filed a Letter-Complaint before the Office of the Court Administrator (OCA) charging respondent Atty. Bantugan with misuse of funds and property of the Legal Assistance for Effective Law Enforcement Program (LAELEP) and claiming that the IBP-Bohol failed to file the appropriate criminal and/or administrative action against Atty. Bantugan.

Atty. Bantugan is a member of the IBP-Bohol and LAELEP. LAELEP is a joint project of the Provincial Government of Bohol and the IBP-Bohol aimed at assisting police officers in the performance of their functions through litigation and education.^[5] Subsequently, this project was extended to benefit *barangay tanods*, firemen, jail officers, and provincial jail guards. The provincial government provides for the funds while the IBP-Bohol implements the project.

On April 19 and 20, 2002, the LAELEP held live-in seminars which incurred expenses for food and accommodation. Complainant alleged that Atty. Bantugan took a check payable to cash in the amount of P27,500.00 from LAELEP/IBP-Bohol staff which was intended for JJ's Seafood Village as payment. Atty. Bantugan undertook to pay the establishment and such payment was recorded in LAELEP's accounting books as paid. However, no payment was effected and demands were made by the owner of

JJ's Seafood Village. Thus, during the succeeding administration of IBP-Bohol (2005-2007), a Special Committee^[6] was formed to investigate LAELEP and Atty. Bantugan, and make recommendations therefor.

On December 19, 2006, the Special Committee recommended "*the filing of administrative, civil and/or criminal action to the person/persons concerned, if evidence so warrants.*" ^[7] During the course of their investigation, the Special Committee discovered that in addition to the non-payment to JJ's Seafood Village, there were other instances of misappropriation which involved Atty. Bantugan. For reference, the Special Committee's Final Report/Recommendation^[8] is quoted as follows:

1. COMBAT PAY DEDUCTIONS

The committee believes that all money collected is a public fund hence, there must be a proper liquidation to be prepared and submitted to the LAELEP Office.

2. BALANCE IN JJ'S [SEAFOOD VILLAGE]

Although the account is now fully paid but we cannot comprehend why personal checks [were] issued and eventually dishonored by the bank. Payment was only effected after the investigation was conducted and upon demands made by the restaurant owner.

3. PNP HANDBOOK

We found out that this was fully paid on December 03, 2002 and until now, the PNP [H]andbook is not yet delivered. Presently, the draft is under proof reading by Atty. Cristifil Baluma, who promised to complete the job by early [January of] 2007.

4. LAPTOP

The [laptop] was borrowed by Atty. Danilo A. Bantugan on December 15, 2005 and returned on October 31, 2006 after written and oral demands were made by the Investigating Committee.

The Committee recommends that any property of the LAELEP before it can be taken out by any borrower should accomplish a borrower's card indicating the date it was borrowed and the date to be returned which must not exceed two days and must be duly approved by the IBP President countersigned by the LAELEP Chairman.

5. TRIP TO SINGAPORE

The Committee believes that this expenditure must also be subject to liquidation, as this also involves public funds. During the IBP Board Meeting on Sept. 14, 2006, Atty. Danilo Bantugan committed to submit documents to support the liquidation but until now, he has not yet complied.

Despite these findings, complainant claimed that the succeeding administrations of IBP-Bohol ignored the Special Committee's recommendation to file charges against Atty. Bantugan. In view of the aforementioned acts, complainant charged Atty. Bantugan for violating the CPR, in particular, Rule 1.01^[9] for engaging in unlawful, dishonest, or deceitful conduct, as well as Rule 7.03^[10] for engaging in conduct that adversely reflects on his fitness to practice law.

The OCA endorsed the Letter-Complaint to the Office of the Bar Confidant (OBC) for whatever action it deemed appropriate.^[11] The Court directed the IBP-Bohol and Atty. Bantugan to file their respective Comments.^[12] Considering the seriousness of the allegations imputed against Atty. Bantugan, the OBC recommended that the case be referred to the IBP-Commission on Bar Discipline (IBP-CBD) for investigation and recommendation.^[13] Meanwhile, receipt of evidence for the case was delegated to the President of IBP-Bohol.

In his Comment^[14] and Position Paper,^[15] Atty. Bantugan denied the charges against him. He stated that he was a City Councilor of Tagbilaran City, Bohol from 2001-2010; during which time he concurrently held the following positions in LAELEP: (a) technical committee member from 2001-2003; (b) pioneer committee member from 2003-2005; and (c) committee member from 2005-2007 and 2007-2009. As regards the alleged misuse of LAELEP funds, he claims that this issue was pursued by then IBP-Bohol President Atty. Salvador Diputado (2005-2007) as an election issue because he was seeking a seat in the Provincial Board of Bohol and campaigned for Atty. Antonio Amora, Jr., who was a rival candidate of Atty. Diputado in the IBP-Bohol elections. He claimed that complainant could have submitted this purported issue to the Supreme Court as early as 2002 or thereabouts, yet sent the Letter-Complaint not long after he acted as legal counsel for one Nemesio Barafon^[16] in filing a Complaint for disbarment against complainant in 2009. In fine, he averred that the filing of the Letter-Complaint was an act of retaliation and a form of barratry on the part of complainant.

Further, Atty. Bantugan alleged that the accountability for LAELEP funds is to the Provincial Government of Bohol. He underscored that had there been anything irregular or unliquidated, the provincial government would not have regularly and continuously released funds since 2002. As regards the Philippine National Police (PNP) combat pay, he claims that the Special Committee ignored the affidavit of PNP Provincial Director Superintendent Sancho Bernales which he submitted to them for consideration, which attested to the following facts: (1) he was designated as a Training Director and conducted a series of trainings; (2) he was tasked to manage the expenditures from the trainings, with the approval of the PNP Provincial Director; (3) to support the trainings, the PNP consented to a deduction from their personnel's combat pay, and thus, these money was purely a PNP Fund; and (4) he recommended that the excess combat pay deductions be given to LAELEP. With regard to the non-payment to JJ's Seafood Village, he claimed that he had a separate account with the establishment which was co-mingled by the Special Committee. As regards the trip to Singapore, he stated that he was one of the

members of the IBP-Bohol delegation and questioned why he was singled out when the trip was fully documented and liquidated to the provincial government. As to the laptop, he denied possession of the same.

In its Comment^[17] the IBP-Bohol averred that contrary to complainant's claim, its previous administrations had acted upon the investigation involving Atty. Bantugan. The IBP-Bohol Board of Officers for 2009-2011 adopted Resolution No. 17, Series of 2009^[18] which endorsed the Special Committee's Final Report/Recommendation to the Provincial Government of Bohol for action under the premise that the funds allegedly misused were government funds. Likewise, the IBP-Bohol Board of Officers for 2011-2013 issued Resolution No. 5, Series of 2011^[19] following up on the investigation conducted by the provincial government and requesting a copy of the results of the audit. However, no definite action was taken by the provincial government. The present administration of IBP-Bohol adopted the position of its previous administrations to the effect that it is the provincial government who should file the proper charges. In consideration, however, of the fact that IBP-CBD now possessed the records of the case, the IBP-Bohol submitted the resolution of the investigation on Atty. Bantugan to its sound judgment.

*Report and Recommendation
of the Investigating
Commissioner*

In his Report and Recommendation^[20] dated September 1, 2016, the Investigating Commissioner recommended the dismissal of the complaint without prejudice to its re-filing with supporting evidence. After examining the records of the case, he found that complainant failed to meet the quantum of proof of preponderance of evidence before Atty. Bantugan could be held administratively liable. He determined that the Special Committee's Final Report/Recommendation and the Minutes of the Joint Meeting of the IBP-Bohol Board of Officers and LAELEP, unsupported by documentary or any other evidence, cannot sustain a finding of misconduct. In fine, while the accusations against Atty. Bantugan portrayed him in a negative light, these were unfounded. Finally, the Investigating Commissioner underscored that while the IBP-BOG requested the submission of affidavits of the members of the Special Committee, relevant witnesses whom the Special Committee obtained evidence from or those with personal knowledge of the facts, as well as supporting documents as to the acts attributed to Atty. Bantugan, these were not complied with despite receipt of evidence for both parties being delegated to the current President of IBP-Bohol.

Recommendation of the IBP-BOG

On March 1, 2017, the IBP-BOG issued Resolution No. XXII-2017-839,^[21] which reversed the recommendation of the Investigating Commissioner, thus:

RESOLVED to REVERSE the recommendations of the Investigating Commissioner and IMPOSE the penalty of SUSPENSION from the practice of law for two (2) years.

RESOLVED FURTHER, to direct CIBD Assistant Director Juan Orendain P. Buted to prepare an extended resolution explaining the Board's action.

In its Extended Resolution^[22] dated July 5, 2018, the IBP-BOG ratiocinated that Atty. Bantugan was administratively liable for violation of Rules 1.01 and 7.03 of the CPR for the following reasons: (a) he acted with dishonesty when he failed to deliver the check for payment to JJ's Seafood Village for food and accommodation expenses and thereafter, attempted to pay the same by the issuance of a personal check which was subsequently dishonored; (b) he failed to contest substantially the allegations of misappropriation of funds pertaining to the PNP combat pay deduction, unliquidated checks, PNP Handbook, trip to Singapore, and his failure to return a laptop to IBP-Bohol; and (c) he failed to uphold the integrity and dignity of the legal profession and discredited the IBP-Bohol when the aforementioned acts were publicized in two local newspapers in Tagbilaran City.

On September 21, 2018, Atty. Bantugan filed a Motion for Reconsideration^[23] and a Second Motion for Reconsideration with Leave to Admit Delayed Pleadings^[24] dated September 30, 2019, both of which were opposed by complainant.

On December 6, 2018, the IBP-BOG issued a Resolution^[25] denying the Motion for Reconsideration for failure to raise new matters which would otherwise convince the IBP-BOG to reverse its earlier ruling.

The Issue

The essential issue in this case is whether Atty. Bantugan should be held administratively liable for violating Rules 1.01 and 7.03 of the CPR.

The Court's Ruling

The Court adopts the findings and recommendation of the Investigating Commissioner to dismiss the complaint against Atty. Bantugan, without prejudice to its re-filing with sufficient evidence.

At the onset, it bears to emphasize that the quantum of proof in administrative cases against members of the legal profession is substantial evidence, and not preponderance of evidence as stated by both the Investigating Commissioner and the IBP-BOG. This matter has been settled in the case of *Reyes v. Atty. Nieva*,^[26] thus:

Besides, the evidentiary threshold of substantial evidence - as opposed to preponderance of evidence - is more in keeping with the primordial purpose of and essential considerations attending this type of cases. As case law elucidates, "[d]isciplinary proceedings against lawyers are *sui generis*." Neither purely civil nor purely criminal, they do not involve a trial of an action or a suit, but is rather an investigation by the Court into the conduct of one of its officers. Not being intended to inflict punishment, it is in no sense a criminal prosecution. Accordingly, there is neither a plaintiff nor a prosecutor therein. It may be initiated by the Court *motu proprio*. **Public interest is its primary objective, and the real question for determination is whether or not the attorney is still a fit person to be allowed the privileges as such. x x x (Emphases supplied)**

This was the same conclusion in the recent case of *Spouses Nocuenca v. Atty. Bensi*,^[27] further citing *Reyes* and *Dela Fuente Torres v. Dalangin*^[28] which stated that