

FIRST DIVISION

[A.C. No. 10933, November 03, 2020]

WILSON B. TAN, COMPLAINANT, VS. ATTY. JAMES ROULYN R. ALVARICO, RESPONDENT.

DECISION

PERALTA, C.J.:

Before this Court is an administrative complaint^[1] for disbarment filed by Wilson B. Tan (*complainant*) against respondent Atty. James Roulyn R. Alvarico (*Atty. Alvarico*) on grounds of conflict of interest and betrayal of trust and confidence of client, in violation of the Code of Professional Responsibility.

Complainant is the offended party in Criminal (*Crim.*) Case No. 2014-22652 for theft pending before Branch 44 of the Regional Trial Court of Dumaguete City. Respondent is the counsel for the accused Blas Fier "Buddy" Manco (*Manco*).^[2]

Complainant alleged in his Complaint that Atty. Alvarico personally approached and spoke with him, telling him that he can convince his client Manco to settle, provided complainant give him 15 percent (15%) commission. However, complainant countered and told Atty. Alvarico that only 5% shall be his share by way of commission. Complainant and Atty. Alvarico allegedly met several times to discuss this proposal, but no settlement was reached due to the latter's insistence of a 15% commission.^[3]

Complainant contends that Atty. Alvarico had violated Rule 15.03 and Canon 17 of the Code of Professional Responsibility, and should therefore be disbarred.^[4] In Complainant's Position Paper submitted to the Integrated Bar of the Philippines (*IBP*) Commission on Bar Discipline (*CBD*), he claims:

Thus the No Counsel No Dealing Rule as well as the proscription against conflict of interest are violated by respondent.

But what worsened these violations is his attempt at selling his client down-the-drain in order that in his conceived Judas Escariot scheme of settlement, he becomes richer by the 15% agent's commission out from the pocket of his client. Although the attempt at settlement did not materialize, yet the preliminary actuations of respondent in offering himself as an agent of the accuser of his client nonetheless earned for him a betrayal of trust and confidence against his unknowing client. For certainly respondent did not previously inform his client of his becoming a settlement agent on commission of complainant.^[5]

In support of his Complaint, complainant presented Atty. Alvarico's Affidavit dated 30 June 2015^[6] to prove that the settlement talks were exclusively between himself and Atty. Alvarico, that settlement "fizzled out" due to the alleged insistence of the

15% commission, and that there was conflict of interest and betrayal of trust and confidence by Atty. Alvarico against his client Manco.^[7]

Complainant also offered the Transcript of Stenographic Notes (TSN) taken during the hearing of Crim. Case No. 2014-22652 on August 10, 2015 to support his argument that Atty. Alvarico's failure to cross-examine him upon his testimony on the settlement and commission is an implied admission of the charges.^[8]

For his part, Atty. Alvarico denied the charges against him^[9] for being utterly baseless, fabricated, and unfounded.^[10]

Atty. Alvarico admitted he is the counsel for the accused Manco, and that at the behest of his client, has asked complainant if there was any possibility of amicable settlement.^[11] He argues that there is no conflict in this case because he never represented conflicting interest, but solely the interest of his client Manco. No attorney-client relationship was established with complainant as the settlement negotiations were done according to his duty to defend his client Manco, the accused in the criminal case. He negotiated with complainant with the consent, authority and at the instance of his client Manco.^[12]

As regards complainant's allegations that Atty. Alvarico was negotiating with him for monetary gain, Atty. Alvarico responded with a clear denial that he never demanded from complainant any commission, arguing that complainant had made up such outrageous statement.^[13]

Atty. Alvarico also admitted that at the behest of his client Manco, he asked complainant if there was a possibility of amicably settling the case as Manco was willing to pay for the value of the alleged stolen steering wheel. Complainant then made known his demands, which was for Manco to pay P350,000.00 plus P50,000.00 for every month of delay. Atty. Alvarico then informed complainant that Manco was only willing to pay for the value of the alleged stolen steering wheel.^[14] During this first meeting, Manco was present and never heard Atty. Alvarico asking or negotiating for any commission. In support of this, Atty. Alvarico presented Manco's Affidavit dated February 23, 2017^[15] wherein Manco stated:

That, the complaint of Dr. Tan against Atty. Alvarico are again false, untrue, fabricated, and unbelievable because what Dr. Tan failed to state and consider in his complaint is that it was me who asked Atty. Alvarico to approach Dr. Tan and to offer to settle the case;

That, Dr. Tan also failed to state in his complaint that I was present during the first time Atty. Alvarico first approached Dr. Tan after the hearing of my case and that I heard all the demands made by Dr. Tan but I never heard Atty. Alvarico ask for any commission from Dr. Tan;^[16]

x x x x

Further, the private prosecutor was present when Atty. Alvarico first approached complainant, as testified by complainant himself and recorded in the TSN:

A: Yes sir. There were three (3) times that the defense counsel approached me. In fact, the first time from this Honorable Court you and I, my lawyer, when we were downstairs, the defense counsel asked me if

I could [possibly] accept for settlement which in front of you I told him that I will be charging three hundred fifty thousand (P350,000.00) pesos
x x x^[17]

Thereafter, Atty. Alvarico met complainant in chance meetings at the Hall of Justice to ask if he had considered his client Manco's offer.^[18] Atty. Alvarico argues that every time he would speak with complainant, he would keep his client Manco aware and updated of the demands of complainant. Manco rejected complainant's demands for being grossly excessive and large considering the value of the subject steering wheel is only P28,000.00. Hence, no such settlement was ever had.^[19]

As regards the cross-examination, Atty. Alvarico explained that he did not cross-examine complainant on the commission-related allegations because such were incredible and outrageous, leaving him shocked and confused. Further, he believed such were immaterial to the issues in Crim. Case No. 2014-22652 concerning the alleged theft of the steering wheel from complainant's car.^[20]

Atty. Alvarico posits that complainant filed the Complaint against him as complainant was enraged by the Affidavit^[21] he executed in support of Atty. Camelo D. Pidor's (Atty. Pidor) defense in the criminal case for threats filed by complainant.^[22] He also notes of complainant's propensity for filing cases against persons who get in his way,^[23] including court personnel, lawyers and judges.^[24]

On November 22, 2017, the IBP Investigating Commissioner recommended the dismissal of the Complaint for failure of complainant to prove by preponderance of evidence the charges against Atty. Alvarico.^[25] The Commissioner found that Atty. Alvarico's act of approaching complainant to discuss the possibility of a compromise is not conflict of interest, but actually in the interest of his client. As regards the allegation that Atty. Alvarico asked for a commission on the negotiation, complainant's documentary exhibits proved only that the former was indeed counsel for the accused Manco. Complainant failed to prove such allegation, which was found to be self-serving, apart from being unsubstantiated, and hence deserving of very little weight.^[26]

On January 19, 2019, the IBP Board of Governors issued a Notice of Resolution adopting the findings of fact and recommendation of the IBP Commissioner to dismiss the Complaint.^[27]

Complainant filed a Motion for Reconsideration dated August 12, 2019^[28] reiterating his arguments in his Complaint. In addition, he emphasized that the non-reaction and conduct of Atty. Alvarico was an "admission by silence." Moreover, Atty. Alvarico's position paper was belatedly filed without documentary attachments, and therefore should have been considered a mere scrap of paper.^[29]

In a letter dated September 27, 2019,^[30] the IBP-CBD transmitted to this Court the Notice of Resolution of the IBP Board of Governors, as well as the records of the instant case.

As a preliminary procedural matter, it is fit to note that Bar Matter No. 1645 (*B.M. No. 1645*) dated 13 October 2015 amended Section 12 of Rule 139-B on the Review and Recommendation by the Board of Governors, as follows:

Sec. 12. Review and Recommendation by the Board of Governors.

a) Every case heard by an investigator shall be reviewed by the IBP Board of Governors upon the record and evidence transmitted to it by the Investigator with his report.

b) After its review, the Board, by the vote of a majority of its total membership, shall recommend to the Supreme Court the dismissal of the complaint or the imposition of disciplinary action against the respondent. The Board shall issue a resolution setting forth its findings and recommendations, clearly and distinctly stating the facts and the reasons on which it is based. The resolution shall be issued within a period not exceeding thirty (30) days from the next meeting of the Board following the submission of the investigator's report.

c) The Board's resolution, together with the entire records and all evidence presented and submitted, shall be transmitted to the Supreme Court for final action within ten (10) days from issuance of the resolution.

d) Notice of the resolution shall be given to all parties through their counsel, if any.^[31]

Hence, a resolution of the IBP Board of Governors, arising from its review of the report of the IBP Investigating Commissioner, and which either recommends the dismissal of the complaint or the imposition of disciplinary action, shall be transmitted to the Supreme Court for final action. B.M. No. 1645 did away with the procedure of filing a motion for reconsideration as well as a petition for review of the resolution of the IBP Board of Governors.^[32] Thus, the Court will proceed to take final action on the Complaint.

The Court's Ruling

The Court finds no cogent reason to depart from the findings and recommendations of the IBP Board of Governors.

An attorney enjoys the legal presumption that he is innocent of the charges against him until the contrary is proved, and that as an officer of the Court, he is presumed to have performed his duties in accordance with his oath.^[33] In disbarment proceedings, the quantum of proof is substantial evidence and the burden of proof is on the complainant to establish the allegations in his complaint.^[34]

Substantial evidence is defined under Section 6, Rule 133 of the 2019 Amendments to the 1989 Revised Rules on Evidence^[35] as "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion,"^[36] while burden of proof is defined under Section 1, Rule 131 as "the duty of a party to present evidence on the facts in issue necessary to establish his or her claim or defense by the amount of evidence required by law."^[37]

The basic rule is that reliance on mere allegations, conjectures and suppositions will leave an administrative complaint with no leg to stand on.^[38] Charges based on mere suspicion and speculation cannot be given credence.^[39] Thus, failure on the part of complainant to discharge his burden of proof by substantial evidence

requires no other conclusion than that which stays the hand of the Court from meting out a disbarment order.^[40]

In the IBP Commissioner's Report and Recommendation adopted by the IBP Board of Governors, the quantum of proof by which the charges against respondent were assessed was preponderance of evidence,^[41] which is defined under Section 1, Rule 133 of the Revised Rules on Evidence^[42] as "superior weight of evidence on [where] the issues involved lies."^[43] Notably, however, the Court has already clarified in *Reyes v. Atty. Nieva*^[44] that based on a survey of jurisprudence, the quantum of proof for administrative proceedings against lawyers is substantial evidence and not preponderance of evidence. We stressed that this pronouncement ought to control and quell any further confusion on the proper evidentiary threshold. Moreover, we recognized that 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 disciplinary cases:^[45]

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. Hence, in the exercise of its disciplinary powers, the Court merely calls upon a member of the Bar to account for his actuations as an officer of the Court with the end in view of preserving the purity of the legal profession and the proper and honest administration of justice by purging the profession of members who by their misconduct have proved themselves no longer worthy to be entrusted with the duties and responsibilities pertaining to the office of an attorney. In such posture, there can thus be no occasion to speak of a complainant or a prosecutor.'^[46]

A survey of administrative cases recently promulgated in the year 2020 affirms that the Court has been applying substantial evidence as the quantum of proof in disbarment proceedings.^[47]

Guided by the foregoing, the Court finds that complainant failed to discharge his burden of proof as he did not establish his claims through relevant evidence as a reasonable mind might accept as adequate to support the conclusion that Atty. Alvarico is guilty of representing conflicting interests and betrayal of trust and confidence reposed in him by his client Manco.

Complainant alleges that Atty. Alvarico violated Rule 15.03 and Canon 17 of the Code of Professional Responsibility.

Rule 15.03 – "A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts."