

EN BANC

[A.C. No. 12486, October 15, 2019]

ANTONIO X. GENATO, COMPLAINANT, VS. ATTY. ELIGIO P. MALLARI, RESPONDENT.

DECISION

PER CURIAM:

PREFATORY

Lawyers are disciplined, as are judges and court personnel, on the totality of the circumstances attendant to the case being heard. In such administrative proceedings, the Court is not limited by rules and principles applied in a mechanical fashion. If justice so demands, we treat the parties' pleadings with due regard to what we really are, a small community where everyone knows or ought to know each one else. A disciplinary case is not accurately described as a straitjacket worn beneath judicial robes. More subtly but poignantly, cases of this type is like asking, "Who has seen the wind?" and answering, "[n]either I nor you, [b]ut when the leaves hang trembling, [t]he wind is passing through."^[1]

THE CASE

Complainant Antonio X. Genato seeks the disbarment of respondent Atty. Eligio Mallari for the latter's deliberate disregard of the *Rules of Court* and jurisprudence, and violation of the *Lawyer's Oath* and *Code of Professional Responsibility* in his conduct and dealings.

THE COMPLAINT

In his undated complaint-affidavit,^[2] complainant essentially alleged:

Respondent and his wife claimed to be the owner of a one hundred thirty-three (133) hectare real property located in San Fernando, Pampanga which he allegedly acquired by virtue of a judgment award in a previous case.

Respondent induced complainant to invest P18 Million in the property. In turn, respondent would give complainant the exclusive power to sell a portion of the land, about thirty-three (33) hectares, and all proceeds of the sale would go to complainant. The latter, however, discovered that the property actually belonged to the Philippine National Bank (PNB) and had been divided for distribution to land reform beneficiaries.

Complainant filed a criminal complaint for estafa against respondent, docketed I.S. No. XV-03-INV-13D-04135. The criminal complaint was, however, dismissed, and is now pending review with the Department of Justice.

Aside from his own personal experience with respondent, complainant drew attention to cases and instances involving respondent which showcased the latter's propensity to deceive, his unethical behavior, and his abusive use of power as a member of the bar:

1. In "*Eligio P. Mallari v. Government Insurance System (GSIS) and the Provincial Sheriff*," respondent employed dilatory tactics to stop the execution of a final and executory decision involving his debt with GSIS which he had evaded to pay for twenty-four (24) years. In that case, given respondent's atrocious professional behavior, the Court had to order the Committee on Bar Discipline (CBD) to investigate his actuations. Despite the investigation, respondent continued to act with impunity in disregarding and flouting the Court's directives.
2. On October 29, 2012, respondent paid advertisements published in the Philippine Star and the Philippine Daily Inquirer, challenging Court of Appeals' Associate Justice Apolinario D. Bruselas, Jr. to a "public and televised debate" in relation to an issuance in the case entitled "*PNB v. Eligio P. Mallari, et al.*"
3. Respondent employed delaying tactics to prevent the enforcement of a writ of possession issued in the case docketed G.R. No. 157660 entitled "*Eligio P. Mallari v. Banco Filipino Savings and Mortgage Bank.*" Consequently, the Court warned respondent about his unethical conduct.
4. Respondent filed baseless harassment cases against the lawyers of PNB and the Register of Deeds of Pampanga. These cases were dismissed. But respondent continued to file frivolous petitions before the Court purportedly to protect his alleged land ownership when it was too obvious that he merely fabricated a facade for his suspicious title.

The Court takes note of respondent's practice built on harassing and intimidating judges and court personnel, as well as opposing lawyers and their clients, with complaints and frivolous submissions.

RESPONDENT'S COMMENT

In his Verified Answer dated November 25, 2015,^[3] respondent denied the charges. He asserted that in all the cases cited by complainant, he was only protecting and defending his proprietary rights.

As for the challenge to Associate Justice Bruselas, Jr. to a public and televised debate, he claimed it was his right as an officer of the court to mount such challenge because the latter issued a "VOID" resolution.

Respondent further contended that complainant filed the present disbarment complaint solely to harass and molest him and his wife.

FINDINGS AND RECOMMENDATION OF THE COMMITTEE ON INTEGRITY AND BAR DISCIPLINE

In his Report and Recommendation dated December 4, 2017,^[4] Investigating Commissioner Jose Villanueva Cabrera made the following findings:

1. Respondent's published challenge to an Associate Justice of

the Court of Appeals to a "public and televised debate" was an utter disregard of Section 20, Rule 138 of the Rules of Court, which reminds respondent as an officer of the court:

- i. To maintain allegiance to the Republic of the Philippines and to support the Constitution and obey the laws of the Philippines;
- ii. To observe and maintain the respect due to the courts of justice and judicial officers.

As a lawyer, respondent was put to task by the Investigating Commissioner to know that Judges and Justices from first level courts, Regional Trial Courts, Sandiganbayan, Court of Tax Appeals, Court of Appeals and the Supreme Court would decide cases based only on law and evidence, and there would be remedies and proper venues to challenge their decisions, resolutions, or orders. According to the Investigating Commissioner, this would not include challenging a Justice to a public and televised debate. Too, the *Lawyer's Oath* emphasized the obligation of members of the bar to "obey the laws as well as the legal orders of the duly constituted authorities." The Investigating Commissioner concluded that respondent violated the following provisions of the Code of Professional Responsibility:

Canon 1 - A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and legal processes

Rule 1.02 - A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system

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Canon 10 - A lawyer owes candor, fairness and good faith to the courts.

Rule 10.03 - A lawyer shall observe the rules of procedure and shall not misuse them to defeat the ends of justice.

Canon 11 - A lawyer shall observe and maintain the respect due to the courts and to Judicial officers and should insist on similar conduct by others.

Rule 11.05 - A lawyer shall submit grievances against a judge to the proper authorities only."

2. Respondent deliberately disregarded the writ of possession issued in G.R. No. 157660 entitled *Eligio P. Mallari v. Banco Filipino Savings and Mortgage Bank*. The Investigating Commissioner reiterated the long-standing rule that upon the failure of a mortgagor to redeem the property within the prescribed period, a winning bidder becomes the absolute owner of the property and the issuance of a writ of possession in his favour becomes a matter of right. It would, thus, be a court's ministerial duty to issue a writ of possession. The Investigating Commissioner was of the belief that respondent

took advantage of his profession as a lawyer to unjustifiably stop the issuance and enforcement of the writ of possession.

3. Respondent violated the Lawyer's Oath and the Code of Professional Responsibility in G.R. No. 157659 entitled "*Eligio P. Mallari v. GSIS and the Provincial Sheriff.*" The Investigating Commissioner found respondent guilty of misconduct for employing dilatory tactics to stall the execution of a final and executory decision. Respondent was said to have resorted to vexatious maneuvers solely to delay the enforcement of a writ of possession. The Investigating Commissioner concluded that respondent deliberately abused court procedures and processes to obstruct the fair and quick administration of justice in favor of the mortgagee and purchaser GSIS,^[5] and adjudged respondent to have contravened Rule 10.03, Canon 10 of the Code of Professional Responsibility, by which he was enjoined as a lawyer to "observe the rules of procedures and x x not [to] misuse them to defeat the ends of justice[.]"^[6]

4. On the charge of respondent's filing of whimsical cases against the lawyers of PNB and the Register of Deeds of Pampanga and complainant Genato, the Investigating Commissioner found no basis to support a further investigation of this charge.

The Investigating Commissioner recommended that in view of the nature of respondent's misconduct, and taking into consideration his "advanced age and the excessive and disproportionate passion in defending his own case," respondent should be meted the penalty of suspension from the practice of law for six (6) months.

RECOMMENDATION OF THE IBP BOARD OF GOVERNORS

Under Resolution No. CBD CASE NO. 14-4275, the IBP Board of Governors resolved to adopt the findings of the Investigating Commissioner, with modification:

RESOLVED to ADOPT the findings of fact and recommendation of the Investigating Commissioner, with modification, to impose upon the respondent the penalties of – i) SUSPENSION FROM THE PRACTICE OF LAW FOR A PERIOD OF SIX (6) MONTHS, and ii) for delaying the implementation of the writ of execution as well as his disrespectful acts towards the trial court an additional SUSPENSION FROM THE PRACTICE OF LAW FOR A PERIOD OF SIX (6) MONTHS, where the penalties shall be served successively.

RULING

We adopt the factual findings and legal conclusion of the IBP Board of Governors but impose a more severe penalty than mere suspension.

A lawyer must obey the law and must not abuse court processes

Rule 10.03, Canon 10 of the Code of Professional Responsibility mandates all lawyers to observe the rules of procedure and not misuse them to defeat the ends of justice. To say that lawyers must at all times uphold and respect the law is to state the obvious, but this statement's profound importance can never be over-stressed. Considering that, of all classes and professions, lawyers are most sacredly bound to uphold the law, it is imperative that they also live by the law.^[7]

The lawyer is the nexus of the common people to the law and the rules of procedure. For the lawyer deals directly with clients, and he or she is the one who explains to the latter the legal procedures and remedies available to them. It is imperative, therefore, that a lawyer must not only be knowledgeable of the law and the rules of procedure. He must by himself or herself abide by the law and rules, as well.

Lawyers are officers of the court. They are called upon to assist in the administration of justice. They act as vanguards of our legal system to protect and uphold truth and the rule of law. They are expected to act with honesty in all their dealings, especially with the court.^[8]

Lamentably, many legal practitioners use their knowledge of the law to perpetrate misdeeds or to serve their selfish motives. Respondent was found to be one of these lawyers who has **repeatedly** deliberately abused court processes to fulfill his unlawful intentions and to harass fellow lawyers and their clients as well as judges and court employees who do not actuate his bidding.

Records reveal that in order to unduly prolong the proceedings in different cases filed against him, respondent had interposed numerous appeals and petitions from issuances rendered by courts in these cases. A template for this kind of practice, G.R. No. 157659 and G.R. No. 157660, respondent deliberately ignored the final and executory decisions therein and disregarded the writs of possession correspondingly issued by the courts. Respondent's dilatory and vexatious tactics were obviously to delay the full enforcement of the courts' decisions that were adverse to him. It is a fundamental rule that it is the ministerial duty of courts of law to issue a writ of possession once the decision in a case becomes final and executory. As it was, however, despite finality, respondent did not recognize these decisions, rendering them inutile. Worse, respondent employed all possible ways to stall the execution of the final and executory decisions.

Respondent's act of unduly extending the proceedings in these cases clearly run counter to the objective of the Rules of Court to promote a just, speedy, and inexpensive disposition of every action and proceeding.

In ***Ong v. Grijaldo***,^[9] the Court spelled out in no uncertain terms the duty of a lawyer to obey a court issuance:

A resolution of this Court is not to be construed as a mere request, nor should it be complied with partially, inadequately or selectively. Respondent's obstinate refusal to comply therewith not only betrays a recalcitrant flaw in his character; it also underscores his disrespect of our lawful orders which is only too deserving of reproof.

This imperative proceeds from a lawyer's duty as an officer of the court to uphold the law and help in the efficient dispensation of justice. Respondent had miserably