

EN BANC

[A.C. No. 11754, October 03, 2017]

JOAQUIN G. BONIFACIO, COMPLAINANT, V. ATTY. EDGARDO O. ERA AND ATTY. DIANE KAREN B. BRAGAS, RESPONDENTS.

DECISION

TIJAM, J.:

This administrative case arose from a verified Affidavit-Complaint^[1] filed before the Integrated Bar of the Philippines (IBP) by complainant Joaquin G. Bonifacio (Bonifacio) against respondents Atty. Edgardo O. Era (Atty. Era) and Atty. Diane Karen B. Bragas (Atty. Bragas) for violating the Code of Professional Responsibility (CPR).

The Facts

Sometime in 2003, an illegal dismissal case was lodged against Bonifacio and his company, Solid Engine Rebuilders Corporation entitled *Gil Abucejo, Edgar Besmano, Efren Sager, Darlito Sosa, Gerardo G. Talosa, and Salvador Villanueva v. Solid Engine Rebuilders Corporation and/or Joaquin G. Bonifacio*, docketed as NLRC NCR Case No. 00-05- 05953-03. Complainants therein (Abucejo Group) were represented by Era and Associates Law Office through Atty. Era.^[2]

On June 15, 2004, the Labor Arbiter found Bonifacio and the corporation liable for illegal dismissal and, consequently, ordered them to pay Abucejo Group their separation pay, full backwages and pro-rated 13th month pay. More specifically, Bonifacio and his corporation were ordered to pay a partially computed amount of P674,128 for the separation pay and full backwages, and P16,050.65 for the 13th month pay.^[3] Bonifacio and the corporation brought their case up to the Supreme Court but they suffered the same fate as their appeals and motions were decided against them.^[4]

Thus, on January 26, 2006, a Writ of Execution^[5] was issued to implement the June 15, 2004 Decision. A Notice of Garnishment dated February 6, 2006 was likewise issued.^[6] Two alias writs dated May 8, 2008^[7] and April 16, 2013^[8] were later on issued, directing the sheriff to collect the sum of P4,012,166.43, representing the judgment award plus interest and attorney's fees.

Meanwhile, an administrative complaint was filed against Atty. Era for representing conflicting interests entitled *Ferdinand A. Samson v. Atty. Edgardo O. Era*, docketed as A.C. No. 6664.^[9] In a July 16, 2013 Decision, this Court found Atty. Era guilty of the charge and imposed the penalty of suspension from the practice of law for two years, the dispositive portion of which reads:

WHEREFORE, the Court FINDS and PRONOUNCES Atty. EDGARDO O. ERA guilty of violating Rule 15.03 of Canon 15, and Canon 17 of the Code of Professional Responsibility; and SUSPENDS him from the practice of law for two years effective upon his receipt of this decision, with a warning that his commission of a similar offense will be dealt with more severely.

Let copies of this decision be included in the personal record of Atty. EDGARDO O. ERA and entered in [sic] his file in the Office of the Bar Confidant.

Let copies of this decision be disseminated to all lower courts by the Office of the Court Administrator, as well as to the Integrated Bar of the Philippines for its guidance.

SO ORDERED.^[10]

On November 28, 2013, the scheduled public auction over Bonifacio's and/or the corporation's properties in the business establishment was conducted to implement the alias writ. Atty. Era actively participated therein. He attended the public auction and tendered a bid for his clients who were declared the highest bidders. On the same day, a certificate of sale was issued, which Atty. Era presented to the corporation's officers and employees who were there at that time. Armed with such documents, Atty. Era led the pulling out of the subject properties but eventually stopped to negotiate with Bonifacio's children for the payment of the judgment award instead of pulling out the auctioned properties. Atty. Era summoned Bonifacio's children to continue with the negotiation in his law office. On behalf of his clients, their counter-offer for the satisfaction of the judgment award went from P6 Million to P9 Million.^[11]

As the parties were not able to settle, on December 3, 2013, Attys. Era and Bragas went back to Bonifacio's business establishment together with their clients and several men, and forced open the establishment to pull out the auctioned properties. This was evidenced by the videos presented by Bonifacio in the instant administrative complaint.^[12]

This prompted Bonifacio to file a criminal complaint for malicious mischief, robbery, and trespassing with the Office of the City Prosecutor, Pasay City. In its Resolution^[13] dated March 31, 2014, the Office of the City Prosecutor found probable cause to indict Attys. Era and Bragas for grave coercion.^[14]

Meanwhile, Atty. Era's name remains to appear in pleadings filed before the NLRC and this Court sometime in February and April, 2014 with regard to the subject labor case.^[15]

On August 8, 2014, Bonifacio filed the instant administrative complaint.^[16]

In their Answer,^[17] Attys. Era and Bragas alleged that Bonifacio has no personal knowledge as to what transpired on November 28, 2013 and December 3, 2013 as the latter was not present therein at that time.^[18] Hence, his allegations of force, threat, and intimidation in the execution of the judgment is without basis.^[19] In his defense, Atty. Era further argued that he did not violate the Court's order of suspension from the practice of law as he merely acted as his clients' attorney-in-

fact pursuant to a Special Power of Attorney^[20] (SPA) dated May 3, 2006. It is Atty. Era's theory that with such SPA, he was not engaged in the practice of law in representing his clients in the implementation of the alias writ. He added that he never signed any document or pleading on behalf of his clients during his suspension. For Atty. Bragas, being an associate of Era and Associates Law Firm, she was merely representing the Abucejo Group as said law firm's clients. Anent the Php 6 Million to 9 Million counter-offer that they made, Attys. Era and Bragas explained that the parties were still on negotiation, hence, both parties are free to have their own computations, which they could respectively accept or otherwise.^[21]

In his Report and Recommendation^[22] dated March 17, 2015, Investigating Commissioner Jose Villanueva Cabrera recommended the dismissal of the instant administrative complaint for insufficiency of evidence.

The Investigating Commissioner found nothing wrong with the indication of a suspended lawyer's name in a pleading considering that the same was not signed by the latter. There was also no proof that a pleading was prepared by Atty. Era. On the other hand, there was no impediment against Atty. Bragas to sign the pleadings. There was also no proof that in doing so, Atty. Bragas was assisting suspended Atty. Era in filing a pleading. Neither the presence of Atty. Era during the public auction and the negotiations was an implication or proof that Atty. Era was engaging in the practice of law during his suspension. According to the Investigating Commissioner, anybody, not exclusively lawyers, can be present at an auction sale or negotiation.

As to whether Attys. Era and Bragas violated any rules/laws in the implementation of the judgment by using force, threat, and intimidation, the Investigating Commissioner noted that complainant contradicted such imputations by filing the following pleadings, to wit: (1) a Motion to Close and Terminate Case^[23] dated December 18, 2013, acknowledging the full satisfaction of the judgment award and even prayed for Attys. Era and Bragas' clients to take possession of the remaining machines in his business establishment; (2) a Manifestation^[24] dated March 12, 2014, wherein complainant stated that he has surrendered the vehicles listed in the certificate of sale; (3) an Omnibus Motion with Entry of Appearance (Motion to Withdraw and Motion to Reiterate Motion to Close and Terminate Case and release of TRO Bond^[25] dated February 4, 2014; (4) A Motion for Consignation with Motion to Lift Levy^[26] dated October 29, 2014; and (5) a Motion to Withdraw Complaint^[27] dated December 10, 2013 on the criminal case for Malicious Mischief, Robbery, and Trespassing against Attys. Era and Bragas. In fine, the Investigating Commissioner ratiocinated that in acknowledging the satisfaction of the judgment in the labor case and withdrawing the criminal case that he filed against Attys. Era and Bragas with regard to the implementation of the said judgment, complainant contradicted and demolished his own allegation that the satisfaction of the judgment was improperly and unlawfully implemented.^[28]

Thus, the Investigating Commissioner recommended that the administrative charges against Attys. Era and Bragas be dismissed for insufficiency of evidence.^[29]

The IBP Board of Governors (Board), in its Resolution No. XXI- 2015-270^[30] dated April 18, 2015 reversed and set aside the Investigating Commissioner's findings and conclusions:

RESOLUTION No. XXI-2015-270

CBD Case No. 14-4300

Joaquin G. Bonifacio vs.

Atty. Edgardo O. Era and

Atty. Diane Karen B. Bragas

*RESOLVED to REVERSE as it is hereby REVERSED and SET ASIDE, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", and considering Atty. Era's continued engagement in the practice of law during the period of his suspension by admittedly participating in the negotiation for the payment of money judgment including pegging of interest he acted as his clients advocate instead as an agent in view of the presence also of his client in the negotiation, for holding office and admittedly summoned the complainant's children to determine the money judgment. Hence, Atty. Edgardo O. Era is hereby **SUSPENDED from the practice of law for three (3) years.***

*RESOLVED FURTHER, for her assistance in the unauthorized practice of law of Atty. Edgardo O. Era, Atty. Diane Karen B. Bragas is hereby **SUSPENDED from the practice of law for one (1) month.***

In its Extended Resolution^[31] dated October 17, 2016, the IBP Board of Governors found Atty. Era's argument that he merely acted pursuant to an SPA given to him untenable. The Board explained that the invoked SPA gave Atty. Era the authority to appear and represent the Abucejo Group only on the May 4, 2006 auction and did not include the November 28, 2013 auction. Also, while he was authorized to receive payment on behalf of his clients, the SPA specifically stated that said payments should be made in the form of checks and not machinery or property. Thus, Atty. Era had no authority under the SPA to represent his clients during the November 28, 2013 auction and to pull out and receive the corporation's machines as payment of the judgment award. At any rate, according to the Board, Atty. Era's clients relied on his legal knowledge in having the judgment award satisfied. Clearly, Atty. Era violated Section 28,^[32] Rule 138 of the Rules of Court.^[33]

Corollary to this, the Board also found Atty. Bragas liable for allowing and assisting Atty. Era to engage in an unauthorized practice of law. The Board concluded that Atty. Bragas ought to know that Atty. Era's acts during the satisfaction of the alias writ could be performed only by a member of the bar in good standing.^[34]

Pursuant to Section 12(b),^[35] Rule 139-B of the Rules, the records of the instant case were transmitted to this Court.

No motion for reconsideration or petition for review was filed by either party as of June 29, 2017.

Necessarily, the Court will now proceed to give its final action on the instant administrative case, the issues being: (1) Did Atty. Era engage in the practice of law during his suspension therefrom that would warrant another disciplinary action against him?; and (2) In the affirmative, is Atty. Bragas guilty of directly or indirectly assisting Atty. Era in his illegal practice of law that would likewise warrant this Court's exercise of its disciplining authority against her?

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

*Atty. Era's acts constituted
"practice of law".*

On this matter, Our pronouncement in the landmark case of *Renato L. Cayetano v. Christian Monsod, et. al.*^[36] is on point. Thus, We quote herein the relevant portions of the said Decision, *viz.*:

Black defines "practice of law" as:

"The rendition of services requiring the knowledge and the application of legal principles and technique to serve the interest of another with his consent. It is not limited to appearing in court, or advising and assisting in the conduct of litigation, but embraces the preparation of pleadings, and other papers incident to actions and special proceedings, conveyancing, the preparation of legal instruments of all kinds, and the giving of all legal advice to clients. It embraces all advice to clients and all actions taken for them in matters connected with the law. An attorney engages in the practice of law by maintaining an office where he is held out to be an attorney, using a letterhead describing himself as an attorney, counseling clients in legal matters, negotiating with opposing counsel about pending litigation, and fixing and collecting fees for services rendered by his associate." (*Black's Law Dictionary*, 3rd ed.)

The practice of law is not limited to the conduct of cases in court.
(*Land Title Abstract and Trust Co. v. Dworken*, 129 Ohio St. 23, 193 N.E. 650) A person is also considered to be in the practice of law when he:

"xxx for valuable consideration engages in the business of advising person, firms, associations or corporations as to their rights under the law, or appears in a representative capacity as an advocate in proceedings pending or prospective, before any court, commissioner, referee, board, body, committee, or commission constituted by law or authorized to settle controversies and there, in such representative capacity performs any act or acts for the purpose of obtaining or defending the rights of their clients under the law. **Otherwise stated, one who, in a representative capacity, engages in the business of advising clients as to their rights under the law, or while so engaged performs any act or acts either in court or outside of court for that purpose, is engaged in the practice of law.**" (*State ex. ref. Mckittrick v. C.S. Dudley and Co.*, 102 S.W. 2d 895, 340 Mo. 852).

This Court in the case of *Philippine Lawyers Association v. Agrava*, (105 Phil. 173, 176-177) stated:

"The practice of law is not limited to the conduct of cases or *litigation in court*; it embraces the preparation of pleadings