797 Phil. 573

FIRST DIVISION

[A.C. No. 7388, October 19, 2016]

ATTY. RUTILLO B. PASOK, COMPLAINANT, VS. ATTY. FELIPE G. ZAPATOS, RESPONDENT.

D E C I S I O N

BERSAMIN, J.:

This administrative case concerns the respondent, a retired judge who took on the case that he had intervened in during his incumbency on the Bench. The complainant was the counsel of record of the plaintiff in the case. The charge specified that the respondent was guilty of "representing adverse interest, illegal practice of law, conduct and (sic) becoming as a former member of the bench and conduct unbecoming in violation of the canons of legal ethics with prayer for disbarment"[1]

Antecedent

The antecedents summarized in the Report and Recommendation submitted by the Integrated Bar of the Philippines-Commission on Bar Discipline (IBP-CBD)[2] are as follows:

> Complainant alleged that respondent was the former Presiding Judge of the Regional Trial Court of Branch 35, Ozamis City and retired as such. But before his appointment as RTC Judge, he was the Presiding Judge of the Municipal Trial Court in Cities 10th Judicial Division, Tangub City where he presided [over] a Forcible Entry case docketed as Civil Case No. 330 entitled "Ronald Rupinta vs. Sps. Pacifico Conol and Malinda Conol." Complainant was the counsel of Rupinta and the decision was rendered against him by respondent.
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> Sometime on 24 November 1994 and while respondent was still the Presiding Judge of MTCC, Tangub City, another civil complaint was filed by Ronald Rupinta with his mother, Anastacia Rupinta, as co-plaintiff, against Carmen Alfire and Pacifico Conol, docketed as Civil Case No. 357, for Declaration of Nullity of Deed of Absolute Sale, Reconveyance of Ownership, Accounting of Rents and Fruits and Attorney's Fees and Damages with Petition for the Appointment of a Receiver. Complainant represented the plaintiffs and the complaint was heard by respondent as Presiding Judge of MTCC, 10th Judicial Region, Tangub City. When the case was already scheduled for trial on the merits, respondent suspended the scheduled hearing "*motu proprio*" for reason that there was still affirmative defenses raised by the defendants, like the issue of lack of jurisdiction which prompted the plaintiff to file a Manifestation and

Memorandum which made respondent to (sic) inhibit himself from trying the case.

Since 17 January 1996, the aforesaid case hibernated and respondent was appointed Presiding Judge of RTC Branch 35, Ozamis City. Sometime on 23 March 2006, the newly appointed Presiding Judge of MTCC 10th Judicial Region, Tangub City, Judge Rodolfo L. Vapor, issued an Order informing the parties on the aforesaid case whether they were amenable for him to render judgment on the case of which complainant's client agreed and filed their Memorandum. However, complainant was surprised when he received a Manifestation from the defendants that they are now represented by respondent, the former judge who once presided over the aforesaid case.

Plaintiffs, through complainant, filed their Memorandum within 30 days. However, Judge Vapor, instead of rendering judgment based on the merits and evidences (sic) already presented, issued an Order dated 26 May 2006, dismissing the complaint on the ground that the complaint being denominated as an annulment of a Deed of Sale, is by nature a claim beyond pecuniary estimation, hence the court has no jurisdiction. xxx

The Decision dismissing the complaint was appealed to the RTC, Branch 16, Tangub City presided by Judge Sylvia Singidas-Machacon who directed the appellant to submit their Memorandum. Despite the warning of the complainant that the appearance of respondent is highly illegal, immoral, unethical and adverse to the interest of the public, respondent, being the previous presiding judge, continued on with his appearance for the appellees by filing a Motion for Extension of Time to Submit Memorandum. On appeal, Judge Machacon, reversed the Decision of Judge Vapor sustaining the stand of the client of respondent that the original jurisdiction of the case is vested with the MTCC, Tangub City.

While the aforesaid appealed case was pending before Judge Machacon, complainant filed a Motion to Expunge from the Court Records the Memorandum filed by the Defendants-Appellees through their counsel Ex-MTC and RTC Judge Felipe G. Zapatos, on the ground that as the former presiding judge of the MTCC, Tangub City, he is, disqualified to appear as counsel for the defendants. For allegedly failing to attend the hearing of the above-mentioned Motion, the same was denied by Judge Machacon despite the fact that respondent admitted in his Comment to the said Motion the allegations of complainant. Respondent raised as his defense that he cannot be charged nor penalized of any violation as the counsel of the defendants because when he rendered the first judgment in the Forcible Entry case, he believes he was completely in absolute neutrality. Respondent, likewise, justified his appearance as counsel for the defendants on the ground that he is encountering extreme poverty due to the absence of adequate income and as a source of livelihood he was constrained to handle the aforesaid case.

Respondent admits that complainant filed Civil Case No. 330 entitled "Rupinta vs. Conol" before the MTCC, Tangub City where respondent was

> the presiding judge. As a result of that case, respondent rendered a decision dismissing the same on 23 September 1993. After the aforesaid case was dismissed, complainant, as counsel of Anastacia Rupinta Largo and Ronald Rupinta, filed Civil Case No. 357 for Declaration of Nullity of Deed of Absolute Sale, Reconveyance of Ownership, Accounting of Rents and Fruits and Attorney's Fees and Damages with [Petition for the] Appointment of a Receiver and Civil Case No. 356 entitled "In the Matter of the Intestate Estate of the Deceased Perfecto Rupinta, Petition for Letters of Administration, Mrs. Anastacia Rupinta Largo, Petitioner". Respondent as Presiding Judge inhibited himself from conducting the trial of the two (2) cases as provided for in his Order dated 17 January 1996 on the ground that complainant as counsel for the plaintiffs and petitioner in the aforesaid cases have doubted the absolute neutrality or impartiality of respondent.
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> After inhibiting himself from these cases, respondent was promoted as Regional Trial Court Judge of Branch 35, Ozamis City on 28 October 1997 until he retired from the Judiciary on 14 November 200 I. Thereafter, on account of the fact that respondent needs income in order to survive or he would die of starvation, he engaged in the private practice of law. Four (4) years after he retired from the judiciary and more than ten (10) years after he inhibited himself from conducting trial on Civil Case No. 357, respondent filed a Manifestation for the defendants in Civil Case 357.[3]

Ignoring the warnings of the complainant, the respondent persisted in his representation of the defendants in Civil Case No. 357. Hence, the complainant commenced this administrative case.

After being required by the Court, the respondent submitted his comment, to which the complainant filed a rejoinder. Thereafter, the Court referred the case to the IBP for investigation, report and recommendation.

Report and Recommendation of the IBP-CB

After the parties submitted their position papers, the IBP-CBD issued its Report and Recommendation dated July 9, 2008,[4] whereby it found and held the respondent guilty of violating Rule 6.03 of the *Code of Professional Responsibility,* and recommended that he be suspended from the practice of law and as a member of the Bar for one (1) month. It observed that under Rule 6.03, "a lawyer shall not, after leaving the government service, accept engagement or employment in connection with any matter in which he had intervened while in said service;" and that the words or phrases *any matter* and *he had intervened* qualifying the prohibition were very broad terms, and included any conceivable subject in which the respondent acted on in his official capacity.[5]

In Resolution No. XVIII-2008-403 adopted on August 14, 2008,[6] the IBP Board of Governors approved the Report and Recommendation of the IBP-CBD.

On June 26, 2011, the IBP Board of Governors passed Resolution No. XIX-2011-