

FIRST DIVISION

[A.C. No. 7927, October 19, 2016]

SANDY V. DOMINGO, COMPLAINANT, VS. ATTY. PALMARIN E. RUBIO AND ATTY. NICASIO T. RUBIO, RESPONDENTS.

DECISION

BERSAMIN, J.:

Administrative charges against members of the Bar must not rest on frivolous matters. Otherwise, they shall be outrightly dismissed because their aim is only to harass the respondents.

The Case

Under consideration is the complaint for disbarment brought on April 11, 2008 against respondent Atty. Palmarin E. Rubio, in his capacity as the City Prosecutor of Legazpi City, for allegedly refusing to act on the order of the Secretary of Justice and for allegedly fraudulently and deceitfully withholding the prepared motion for reconsideration from being filed in the Department of Justice (DOJ), thereby causing damage and prejudice to the complainant - an accused in parricide - thereby violating the Lawyer's Oath and the *Code of Professional Responsibility*.

The complainant later on charged respondent Atty. Nicasio T. Rubio in his capacity as Assistant City Prosecutor for his direct participation in the alleged irregularities imputed to his co-respondent.

For convenience, respondents Atty. Palmarin E. Rubio and Atty. Nicasio T. Rubio are hereafter be referred to, respectively, as CP Rubio and ACP Rubio.

Antecedents

The Philippine National Police (PNP) of Legazpi City filed a case for murder in the Office of the City Prosecutor of Legazpi City arising from the killing of one Juan Edgardo Yap Bongalon on August 22, 2005. After due proceedings, the Office of the City Prosecutor filed an information in the Regional Trial Court (RTC) in Legazpi City charging Ariel Dayap and four other persons who were then not identified with particularity as having acted in conspiracy with Dayap to commit the murder.

Subsequently, Dayap executed an extrajudicial confession to the effect that he had conspired with four other persons, namely: the complainant, Mike Arena, Noli Marquez and Lorna Bongalon (the widow of the victim), with the last as the mastermind.

Thus, the Office of the City Prosecutor sought leave of court to conduct a preliminary investigation preparatory to amending the information to include the other four in the charge. However, the assigned investigating prosecutor requested her inhibition from conducting further preliminary investigation because Lorna Bongalon had branded her as biased.

The request for inhibition was granted, and the case was re-assigned to ACP Rubio, who ultimately rendered a resolution recommending the dismissal of the charge as to the four alleged co-conspirators upon finding that the extrajudicial confession of Dayap had been uncounselled.

Approving the resolution, CP Rubio moved for the withdrawal of the information, but the RTC denied the motion to withdraw because the confession of Dayap already established probable cause. The respondents moved to reconsider the denial, but the RTC persisted on its resolution.

On February 6, 2006, the Legazpi PNP presented additional evidence. Thus, a new complaint was filed and was assigned for preliminary investigation to ACP Rubio, who, after conducting the preliminary investigation, issued his resolution on February 27, 2006 finding probable cause for parricide against the complainant, Arena, Marquez and Lorna Bongalon, acting in conspiracy with Dayap, and for robbery only against Dayap, Arena and Marquez.

The amended information for parricide was allowed by the RTC on March 6, 2006, and the RTC issued the warrants for the arrest of the newly-charged accused.

Lorna Bongalon sought a reinvestigation, but the RTC did not give due course to her motion. Accordingly, she moved for the deferment of her arraignment to enable her to appeal to the DOJ by petition for review.

In the meantime, the complainant was arrested. On March 16, 2006, he executed an extrajudicial confession with the assistance of counsel.

Acting favorably on Lorna Bongalon's petition for review, the Secretary of Justice directed CP Rubio on August 11, 2006 to cause with leave of court the withdrawal of the information for parricide against her, the complainant and their three co-accused, and to file in lieu thereof another information for murder only against Dayap.

On August 24, 2006, the respondents filed a motion for reconsideration vis-a-vis the resolution of the Secretary of Justice arguing that the extrajudicial confession executed by the complainant had not been made part of the petition for review filed by Lorna Bongalon's counsel.

It appears that the respondents failed to actually send a copy of their motion for reconsideration to the Secretary of Justice despite furnishing all the parties copies of the motion; and that the motion for reconsideration was received by the DOJ only on April 12, 2007.^[1]

According to the complainant, CP Rubio and ACP Rubio, by intentionally not sending to him a copy of their motion for reconsideration to the DOJ despite furnishing their motion for reconsideration to the other parties, and by belatedly submitting their

motion for reconsideration to the DOJ, which eventually got a copy of it, acted fraudulently.

CP Rubio and ACP Rubio countered that their failure to send a copy to the complainant and to the DOJ was due to sheer oversight, explaining that the releasing clerk of the Office of the City Prosecutor of Legazpi City had not sent the motion for reconsideration despite furnishing copies thereof to all the other parties.

Based on the foregoing, the complainant initiated the complaint for disbarment against CP Rubio and ACP Rubio directly in this Court,^[2] stating that the refusal of the respondents to comply with the order of the Secretary of Justice had caused him to remain behind bars for a crime that he had already been exonerated of, thereby causing him and his family tremendous sufferings; that the respondents had also withheld the filing at the DOJ of their already-prepared motion for reconsideration, and caused the filing of the motion only many months later; that upon resuming its proceedings in the criminal case involving the complainant in early 2007, the RTC, unaware of the appeal by petition for review of Lorna Bongalon in the DOJ, proceeded with the case and issued on March 1, 2007 the order for the arrest against all the accused, including him, but it could have suspended such proceedings to give way to the exercise of review by the Secretary of Justice; that the actuations of the respondents were unjust and absolutely prejudicial to him because he was thereby forced to languish in jail; and that the respondents deserved to be disbarred or otherwise sanctioned for their ignorance of the law and misconduct.

After the parties submitted their respective position papers, the Investigating Commissioner of the Integrated Bar of the Philippines-Commission on Bar Discipline (IBP-CBD) deemed the case submitted for resolution upon the sole issue of whether or not the act of the respondents in respect of the filing of the motion for reconsideration constituted a ground for disbarment.

The IBP- CBD's Report and Recommendation

In its Report and Recommendation dated January 31, 2011,^[3] the IBP-CBD recommended that the complaint for disbarment be dismissed for lack of merit.

The Investigating Commissioner noted that although the complainant relied on Section 27,^[4] of Rule 138 of the *Rules of Court*, the complaint for disbarment was nonetheless frivolous because the rule - which referred to the "wilful disobedience of any lawful order of a superior court" as a ground for suspension or disbarment - had no application because the Secretary of Justice was not a superior court; that the filing of the motion for reconsideration was done in good faith inasmuch as the respondents believed that the motion was the best course of action to take in light of the new evidence in the form of the complainant's own extrajudicial confession; and that the respondents no longer needed to comply with the directive of the Secretary of Justice to cause the withdrawal of the information considering that the RTC had meanwhile issued its order directing the pre-trial to proceed and the trial to be held continuously thereafter until the case was terminated.^[5]

In Resolution No. XX-2012-202 passed on June 13, 2012,^[6] the IBP Board of Governors unanimously adopted and approved the Report and Recommendation of