

THIRD DIVISION

[A. C. No. 5285, April 14, 2004]

JUDGE NIMFA P. SITACA, COMPLAINANT, VS. ATTY. DIEGO M. PALOMARES, RESPONDENT.

DECISION

VITUG, J.:

Judge Nimfa Penaco-Sitaca seeks the disbarment of Atty. Diego M. Palomares, Jr., for having filed a falsified bail bond.

Judge Nimfa Penaco-Sitaca was the Acting Presiding Judge of Branch 35 of the Regional Trial Court (RTC) of Ozamis City. Among the cases in her sala was Criminal Case No. RTC-1503 for murder against Dunhill Palomares, a son of Atty. Diego M. Palomares, Jr., herein respondent. Sometime in September 1997, Atty. Palomares, in representation of Dunhill, filed a bail bond of P200,000.00 to secure the latter's release. The bail bond was purportedly signed and approved by the late Judge Nazar U. Chavez, then Presiding Judge of RTC Branch 18 of Cagayan de Oro City, and with it was a corresponding order of release signed by RTC Branch 18 Clerk of Court Atty. Glenn Peter C. Baldado. When informed of the filing by Atty. Palomares of the bail bond, ostensibly signed by Judge Chavez, Judge Sitaca approved the release of the accused.

When RTC Branch 35 Clerk of Court Atty. Roy P. Murallon later requested Atty. Baldado to forward to the Ozamis City RTC the original records and supporting documents on the bail bond, Atty. Baldado, by then already a practicing lawyer, disavowed the existence of the bail bond. Atty. Baldado wrote to say that per the official records of Cagayan de Oro RTC, Branch 18, the bail bond did not exist, that no approval was made by Judge Chavez, and that no order for the release of Dunhill was issued. Atty. Baldado concluded that the bail bond was a forged document.

Judge Sitaca directed Atty. Palomares to explain. In his letter to Judge Sitaca, Atty. Palomares stated that he was the corporate legal counsel of Bentley House International Corporation, and when the bail application was approved for P200,000.00, he requested the amount from Jonathon Stevenz and Cristina Q. Romarate, Chief Operations Officer and Treasurer, respectively, of Bentley House International Corporation. Instead of giving the money, Stevenz and Romarate proposed to utilize the services of William Guialani. He acceded. Guialani then delivered the release order, which Atty. Palomares immediately presented to the Branch 35 clerk of court of RTC Ozamis City. The clerk of court read the release order and then issued the corresponding order for the release of Dunhill Palomares. Atty. Palomares denied any wrongdoing in connection with the submission of the falsified bail bond and offered, in any event, to replace the bail bond with a cash bond.

Judge Sitaca, finding the explanation unsatisfactory, filed disbarment proceedings against Atty. Palomares.

The Court, in its 02nd August 2000 resolution, required Atty. Palomares to comment on the complaint for disbarment. In his comment, Atty. Palomares reiterated his previous explanation to Judge Sitaca. In addition, he intimated that Judge Sitaca was covering up for the negligence of her clerk of court. He claimed that Judge Sitaca was not around when the release order was issued because it was a Saturday and only a skeletal force was in the office. Atty. Palomares said that he had asked the help of Atty. Manuel Ravanera to prove that the bail bond was secured by Guialani who could have possibly been in "cahoots" with some court employees.

In its resolution of 19 March 2003, the Court referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

In a Report and Recommendation, dated 24 July 2003, Commissioner Milagros V. San Juan held that there was no doubt that the bail bond and order of release were "fictitious." She stated that while there was no conclusive proof that Atty. Palomares had been the author of the fictitious bail and release order, it could not be denied, however, that it was he who presented the papers to the court. Atty. Palomares failed to satisfactorily explain, she stated, why he had to take a circuitous route and secure the services of Guialani despite his claim that he could have easily availed himself of the facilities of other insurance companies. She recommended that Atty. Palomares be suspended from the practice of law for a period of eighteen (18) months. The recommendation was adopted by the IBP Board of Governors on 30 August 2003 in its Resolution No. XVI-2002-81.

Administrative complaints for disbarment are referred to the IBP for formal investigation by the Court after an evaluation by it of the pleadings submitted.^[1] An ex-parte investigation may only be conducted when the respondent fails to appear despite reasonable notice.^[2] In this case, it would appear that no investigation, not even just an *ex-parte* investigation, was conducted by the Commission on Bar Discipline.

The prevailing procedure for investigation is that expressed in Rule 139-B of the Rules of Court some pertinent provisions of which read:

"SEC. 3. *Duties of the National Grievance Investigator.* – The National Grievance Investigators shall investigate all complaints against members of the Integrated Bar referred to them by the IBP Board of Governors.

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"SEC. 5. *Service or dismissal.* – If the complaint appears to be meritorious, the Investigator shall direct that a copy thereof be served upon the respondent, requiring him to answer the same within fifteen (15) days from the date of service. If the complaint does not merit action, or if the answer shows to the satisfaction of the Investigator that the complaint is not meritorious, the same may be dismissed by the Board of Governors upon his recommendation. A copy of the resolution of dismissal shall be furnished the complainant and the Supreme Court which may review the case *motu proprio* or upon timely appeal of the