

EN BANC

A.C No. 9457 — ABNER R. MANGUBAT, *complainant*, *versus* ATTY. REYNALDO L. HERRERA, *respondent*.

Promulgated:

April 5, 2022

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DISSENTING OPINION

CAGUIOA, J.:

I dissent.

The *ponencia* holds respondent Atty. Reynaldo L. Herrera (respondent) administratively liable for the following acts, as found by the Investigating Commissioner:

x x x (1) indicating that the heirs of [Aurelia Rellora Mangubat (Aurelia)] were represented in the suit by Raquel [M. Azada] when it was not true; (2) failing to timely inform the court about the death of [Gaudencio Mangubat (Gaudencio)]; (3) filing of pleadings in court without authority and despite the objections of the heirs of Aurelia and Gaudencio; (4) failing to immediately remit the money he collected to the clerk of court or to the heirs; (5) moving for the surrender of the owner's duplicate title and drafting and notarizing the deed of conditional sale in favor of a party whose interest is in conflict with that of the heirs of Aurelio and Gaudencio.¹

I agree with the foregoing findings. Through his infractions, respondent violated the Code of Professional Responsibility, the Code of Professional Ethics, the Rules of Court, and the Lawyer's Oath.²

Nevertheless, I submit that the recommended penalty by the Integrated Bar of the Philippines Board of Governors (IBP BOG) of three-year suspension from the practice of law is more appropriate than disbarment which, based on the circumstances of this case, is too harsh a penalty.

It is settled that the appropriate penalty to be imposed on an erring lawyer involves the exercise of sound judicial discretion based on the facts of the case.³ In the exercise of this discretion, the Court is reminded that "the power to disbar must be exercised with great caution, and only in a clear case of misconduct that seriously affects the standing and character of the lawyer as an officer of the Court and as a member of the bar."⁴

Thus:

¹ *Ponencia*, p. 5.

² *Id.* at 14.

³ *Parker v. De Paz*, A.C. 12638, January 15, 2020 (Unsigned Resolution).

⁴ *Id.*



x x x Disbarment should never be decreed where any lesser penalty could accomplish the end desired. Undoubtedly, a violation of the high moral standards of the legal profession justifies the imposition of the appropriate penalty, including suspension and disbarment. However, the said penalties are imposed with great caution, because they are the most severe forms of disciplinary action and their consequences are beyond repair.⁵

In the instant case, while respondent was indeed found to have committed several infractions, there appears to be no explicit finding that he was motivated by any malice or fraudulent intent.

To elaborate: As regards respondent's failure to secure the consent and authority of all the heirs of Aurelia, he merely relied on Gaudencio's purported commitment to provide him a Special Power of Attorney at a later time.⁶ Specifically as to his failure to implead complainant Abner R. Mangubat (complainant), respondent alleged that he was merely instructed by Gaudencio to not implead complainant due to their estranged relationship, which even led to the latter's disinheritance.⁷ As for the death of Gaudencio, while respondent did fail to timely inform the court within 30 days from such fact of death, he nevertheless informed the court of such, albeit belatedly at nine months after his death.⁸ As for respondent's continued representation of Gaudencio even after his death, there is no showing that such was motivated by any ill intent. Moreover, while respondent may have failed to promptly account for the funds he received as a result of the Compromise Agreement, there was no showing that he used it for his own benefit.

While the abovementioned reasons are not sufficient to absolve respondent from liability, they should nevertheless be considered by the Court in its imposition of the penalty.

Additionally, while the Investigating Commissioner considered respondent's substantial experience in the practice of law as an aggravating circumstance,⁹ I respectfully submit that the reverse is more apt — that this is respondent's first infraction in his 43 years in the legal profession¹⁰ and should instead be considered to mitigate his liability.

Thus, I respectfully submit that sanctioning respondent with the less severe penalty of suspension than disbarment achieves the ends of the disciplinary proceeding which is to penalize an erring lawyer and to preserve the integrity of the legal profession. The suspension period of three years — as recommended by the IBP BOG — is a very long period already. I believe this already signals the gravity of respondent's misdeeds.

⁵ *Francia v. Abdon*, 739 Phil. 299, 311-312 (2014).

⁶ *Ponencia*, p. 7.

⁷ *Id.* at 7-8.

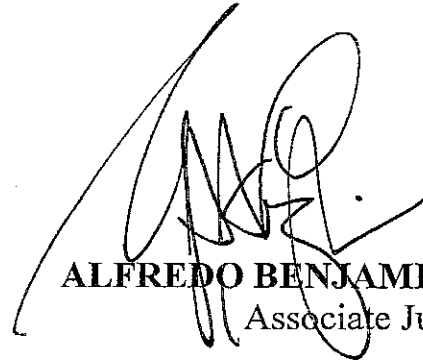
⁸ *Id.* at 8.

⁹ *Id.* at 5.

¹⁰ *Id.* at 14.



In view of the foregoing, I vote to suspend respondent from the practice of law for a period of three (3) years.

A handwritten signature in black ink, consisting of stylized, overlapping loops and lines, positioned above the printed name and title.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice