Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

THE LAW FIRM OF CHAVEZ MIRANDA ASEOCHE represented by its founding partner, ATTY. FRANCISCO I. CHAVEZ,
Complainant,

- versus -

ATTYS. RESTITUTO S. LAZARO and RODEL R. MORTA,
Respondents.

A.C. No. 7045

Present:

SERENO, *CJ*, Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,*
PERLAS-BERNABE, and
CAGUIOA, *JJ.*

Promulgated:
SEP 05 2016

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RESOLUTION

SERENO, *CJ*:

On 8 February 2006, the Law Firm of Chavez Miranda Aseoche (complainant), through its founding partner, Atty. Francisco M. Chavez, filed a Complaint-Affidavit[1] before this Court. Complainant sought the disbarment of Attys. Restituto S. Lazaro and Rodel R. Morta (respondents) for violation of Canons 8 and 10 of the Code of Professional Responsibility. It was alleged that respondents falsely and maliciously accused complainant and its lawyers of antedating a Petition for Review filed with the Department of Justice (DOJ) on 10 October 2005.[2]

FACTUAL ANTECEDENTS

The circumstances, which led to the filing of this administrative complaint, occurred in connection with Criminal Case No. Q-05-136678. The latter was a case for libel then pending against Eliseo F. Soriano before Branch 218 of the Regional Trial Court (RTC) of Quezon City.[3]

* On official leave.
[1] *Rollo*, Volume 1, pp. 1-13.
[2] Id. at 8-11.
[3] Id. at 2.

Complainant acted as the legal counsel of Soriano in that case while respondents represented private complainant Michael M. Sandoval.[4]

On 11 October 2005, lawyers from complainant law firm, led by Atty. Chavez, appeared before the RTC to seek the cancellation of Soriano's scheduled arraignment.[5] During the hearing, Atty. Chavez informed the RTC that a Petition for Review had been filed before the Department of Justice (DOJ) on 10 October 2005. The Petition questioned the resolution of the Office of the City Prosecutor of Quezon City finding probable cause to indict Soriano for libel.[6] Atty. Chavez presented an extra copy of the Petition for Review before the RTC, and explained that the main copy of the Petition stamped received by the DOJ was still with the office messenger, who had personally filed the pleading the day before.[7] Citing the filing of the Petition for Review, Atty. Chavez moved for the suspension of the arraignment for a period of 60 days pursuant to Rule 116, Section 11(c) of the Revised Rules of Criminal Procedure.[8] The RTC, however, denied the motion and proceeded with Soriano's arraignment.[9]

The events that transpired during the arraignment led complainant to conclude that Presiding Judge Hilario Laqui of Branch 218 was biased against its client.[10] Consequently, it filed a Motion for Inhibition on 18 October 2005 requesting Judge Laqui to voluntary inhibit himself from the case.[11]

On 11 November 2005, respondents filed with the RTC a pleading entitled "A Vehement Opposition to the Motion for Inhibition"[12] (Vehement Opposition) to contradict complainant's motion. The following statements, which have become the subject of the instant disbarment complaint, were contained in that pleading:

> A Vehement Opposition
> to the
> Motion for Inhibition
>
> COMES NOW, private complainant, by and through the undersigned counsel, unto this Honorable Court respectfully states:
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> 1. Allegedly, the Presiding Judge exhibited bias, partiality, prejudice and has pre-judged the case against the accused when he proceeded with the arraignment despite the pendency of a petition for review filed with the Department of Justice.

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[4] Id.
[5] Id. at 4.
[6] Id.
[7] Id. at 4-5.
[8] Id.
[9] Id. at 5.
[10] Id. at 42.
[11] Id. at 39-47.
[12] Id. at 48-56.

> 2. They alleged that on October 10, 2005, or the day before the scheduled arraignment, they have filed the petition.
> 3. They cited Rule 116, Section 11(c) of the Revised Rules of Criminal Procedure, where it is provided that upon motion, the arraignment of the accused shall be suspended when a petition for review of the resolution of the prosecutor is pending.
> **4.** We contemplated over this matter. **If indeed the petition was duly filed with the DOJ on October 10, 2005, why is it that the accused did not present a copy of the petition stamped "received" by the DOJ? Why did he not make a manifestation that he forgot to bring a copy? He could have easily convinced the Presiding Judge to suspend the arraignment upon a promise that a copy thereof will be filed with the court in the afternoon of October 11, 2005 or even the following day.**
> 5. **Thus, we come to the conclusion that the accused was able to antedate the filing or mailing of the petition.**[13] (Emphases supplied)

The allegation of antedating was reiterated by respondents in a Comment/Opposition to the Accused's Motion for Reconsideration filed with the RTC on 6 December 2006:

> 4. **It is our conclusion that the accused and his lawyers were able to antedate the filing or mailing of the petition.** We cannot conclude otherwise, unless the accused and his battery of lawyers will admit that on October 11, 2005 that they suddenly or temporarily became amnesiacs. They forgot that they filed the Petition for Review the day before.[14] (Emphasis supplied)

In the Complaint-Affidavit it filed with this Court, complainant vehemently denied the allegation of antedating.[15] As proof that the Petition for Review was personally filed with the DOJ on 10 October 2005, complainant attached to its Complaint-Affidavit a copy of the Petition bearing the DOJ stamp.[16]

In their Comment dated 4 May 2006,[17] respondents alleged that the filing of the disbarment complaint against them was a mere harassment tactic. As proof, they cited the non-inclusion of another signatory to the Vehement Opposition, Public Prosecutor Nadine Jaban-Fama, as a respondent in the Complaint.[18] They also contended that the statements they had made in their pleadings were covered by the doctrine of privileged communication.[19]

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[13] Id. 48-49
[14] Id. at 7, 106.
[15] Id. at 6-8
[16] Id. at 21-38.
[17] Id. at 101-115.
[18] Id. at 107-108
[19] Id. at 108-109.

In a Resolution dated 7 August 2006, the Court referred this case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.[20]

REPORT AND RECOMMENDATION OF THE IBP

In his Report and Recommendation dated 7 July 2008,[21] Commissioner Rico A. Limpingco found respondents guilty of violating the Code of Professional Responsibility:

> We agree with the complainant that the accusation that they antedated the mailing of the DOJ petition is violative of the Code of Professional Responsibility and the duty of all lawyers to observe civility and propriety in their pleadings. It was somewhat irresponsible for the respondents to make such an accusation on the basis of pure speculation, considering that they had no proof to support their accusation and did not even make any attempt to verify from the DOJ the date and the manner by which the said petition was filed. Moreover, as held in *Asa,* we will have to disagree with the respondents' argument on privileged communication, the use of offensive language in pleadings filed in the course of judicial proceedings, constitutes unprofessional conduct subject to disciplinary action.
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> x x x x
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> In *Asa,* the Supreme Court found Atty. Ginger Anne Castillo guilty of breach of Canon 8 of the Code of Professional Responsibility and admonished her to refrain from using offensive and improper language in her pleadings. Considering that the respondents' accusation that the complainant and its lawyers antedated the mailing of Bro. Eliseo Soriano's DOJ Petition is somewhat more serious than an allegation of wanting additional attorney's fees for opening doors and serving coffee, we believe that the penalty of reprimand would be proper in this case.
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> Wherefore, premises considered, it is respectfully recommended that respondent Attys. Restituto Lazaro and Rodel Morta be reprimanded for using improper language in their pleadings with a warning that a repetition of the same will be dealt with more severely.[22]

On 14 August 2008, the IBP Board of Governors issued Resolution No. XVIII-2008-391, which adopted and approved Commissioner Limpingco's Report and Recommendation:

> RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and for using improper language in their pleadings Atty. Restituto Lazaro and

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[20] Id. at 116.
[21] Id. (Volume V) at 3-10.
[22] Id. at 9-10.

> Atty. Rodel Morta are REPRIMANDED with a Warning that a repetition of the same will be dealt with more severely.[23]

On 14 November 2008, respondents filed a Motion for Reconsideration of the Resolution dated 14 August 2008. They argued that the Complaint against them should have been dismissed on the following grounds: (a) complainant's failure to implead the public prosecutor, who must be considered an indispensable party to the case, since the pleading in question could not have been filed without her conformity; (b) as the subject pleadings had been signed by the public prosecutor, their contents enjoyed the presumption of regularity and legality, upon which respondents were entitled to rely; (c) respondents relied in good faith on the review, supervision and direction of the public prosecutor in the filing of the pleading in question; and (d) the statements in the pleading were covered by the doctrine of privileged communication.[24] Respondents also contended that Atty. Chavez should be disciplined for the derogatory statements made against them in the pleadings he submitted during the IBP investigation.

Complainant filed a Comment/Opposition[25] to respondents' Motion for Reconsideration on 8 January 2009.

On 22 March 2014, the IBP Board of Governors issued Resolution No. XXI-2014-146 granting respondent's Motion for Reconsideration and recommending the dismissal of the instant case on the basis of complainant's failure to implead an indispensable party:

> RESOLVED to GRANT Respondent's Motion for Reconsideration, considering that complainant's non-joinder of an indispensable party makes the presumption that Respondents acted according to regulations and in good faith in the performance of their official duties. Thus, Resolution No. XVIII-2008-391 dated August 14, 2008 is hereby SET ASIDE. Accordingly, the case against Respondents is hereby DISMISSED with stern Warning to be more circumspect.

To date, this Court has not received any petition from complainant or any other interested party questioning Resolution No. XXI-2014-146 of the IBP Board of Governors. However, pursuant to Section 12, Rule 139-B of the Rules of Court as amended by Bar Matter No. 1645,[26] we must ultimately decide disciplinary proceedings against members of the bar, regardless of the acts of the complainant.[27] This rule is consistent with our

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[23] Id. at 1-2.
[24] Id. at 11-34.
[25] Id. at 43-57.
[26] Re: Amendment of Rule 139-B, 13 October 2015.
[27] Section 12, Rule 139-B of the Rules of Court, as amended by Bar Matter No. 1645 states:
> Section 12. Review and recommendation by the Board of Governors.
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> a) Every case heard by an investigator shall be reviewed by the IBP Board of Governors upon the record and evidence transmitted to it by the Investigator with his report.
> b) After its review, the Board, by the vote of a majority of its total membership, shall recommend to the Supreme Court the dismissal of the complaint or the imposition of disciplinary action against the respondent.

obligation to preserve the purity of the legal profession and ensure the proper and honest administration of justice.[28] In accordance with this duty, we now pass upon the recommendation of the IBP.

OUR RULING

After a judicious examination of the records of this case, the Court resolves to **SET ASIDE** Resolution No. XXI-2014-146 of the IBP Board of Governors. Not only are the grounds cited as bases for the dismissal of the complaint inapplicable to disbarment proceedings. We are also convinced that there is sufficient justification to discipline respondents for violation of the Code of Professional Responsibility.

Non-joinder of a party is not a ground to dismiss a disciplinary proceeding.

In Resolution No. XXI-2014-146, the IBP Board of Governors dismissed the instant case because of complainant's purported failure to implead an indispensable party. Although this ground for dismissal was not explained at length in its resolution, the IBP Board of Governors appeared to have given credence to the argument proffered by respondents. They had argued that the public prosecutor was an indispensable party to the proceeding, and that her non-joinder was a ground for the dismissal of the case. That ruling is patently erroneous.

In previous cases, the Court has explained that disciplinary proceedings against lawyers are *sui generis*.[29] These proceedings are neither purely civil nor purely criminal,[30] but are rather investigations by the Court into the conduct of its officers.[31] Technical rules of procedure are not strictly applied,[32] but are construed in a manner that allows us to determine whether lawyers are still fit to fulfill the duties and exercise the privileges of their office.[33]

We cannot countenance the dismissal of the case against respondents merely because the public prosecutor has not been joined as a party. We emphasize that in disbarment proceedings, the Court merely calls upon

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> The Board shall issue a resolution setting forth its findings and recommendations, clearly and distinctly stating the facts and the reasons on which it is based.
> The resolution shall be issued within a period not exceeding thirty (30) days from the next meeting of the Board following the submission of the Investigator's report.
> c) The Board's resolution, together with the entire records and all evidence presented and submitted, shall be transmitted to the Supreme Court for final action within ten (10) days from issuance of the resolution.

[28] *Pena v. Aparicio*, 552 Phil. 512-526 (2007); *In re: Almacen v. Yaptinchay*, 142 Phil. 353-393 (1970).
[29] *Ylaya v. Gacott*, A.C. No. 6475, 30 January 2013, 689 SCRA 452-483; *Gonzalez v. Alcaraz*, 534 Phil. 471-484 (2006); *Cojuangco, Jr. v. Palma*, 481 Phil. 646-660 (2004).
[30] *Dizon v. De Taza*, A.C. No. 7676, 10 June 2014, 726 SCRA 70-83 citing *In re: Almacen v. Yaptinchay*, 142 Phil. 353-393 (1970).
[31] *Cojuangco, Jr. v. Palma*, A.C. No. 2474, 481 Phil. 646-660 (2004).
[32] *Feranculio v. Feranculio, Jr.*, 538 Phil. 501-517 (2006).
[33] *Pena v. Aparicio*, 552 Phil. 512-526 (2007); *Gonzalez v. Alcaraz*, 534 Phil. 471-484 (2006) citing *In re: Almacen v. Yaptinchay*, 142 Phil. 353-393 (1970).

members of the bar to account for their actuations as officers of the Court.[34] Consequently, only the lawyer who is the subject of the case is indispensable. No other party, not even a complainant, is needed.[35]

In this case, respondents are only called upon to account for their own conduct. Specifically, their pleadings contain the accusation that complainant antedated the filing of a petition before the DOJ. The fact that Public Prosecutor Jaban-Fama also signified her conformity to the pleadings containing these statements is irrelevant to the issue of whether respondents' conduct warrants the imposition of disciplinary sanctions.

Respondents cannot utilize the presumption of regularity accorded to acts of the public prosecutor as a defense for their own misconduct.

Respondents cannot excuse their conduct by invoking the presumption of regularity accorded to official acts of the public prosecutor. It must be emphasized that the act in question, i.e. the preparation of the pleadings subject of the Complaint, was performed by respondents and not by the public prosecutor. Hence, any impropriety in the contents of or the language used in these pleadings originated from respondents. The mere fact that the public prosecutor signed the pleadings after they were prepared could not have cured any impropriety contained therein. The presumption that the public prosecutor performed her duties regularly and in accordance with law cannot shield respondents from liability for their own conduct.

The claim of respondents that they relied in good faith on the approval of the public prosecutor is likewise untenable. As lawyers, they have a personal obligation to observe the Code of Professional Responsibility. This obligation includes the duty to conduct themselves with courtesy, fairness and candor towards their professional colleagues, including opposing counsel. Respondents cannot disregard this solemn duty solely on the basis of the signature of a public prosecutor and later seek to absolve themselves from liability by pleading good faith.

Respondents violated Canons 8 and 10 of the Code of Professional Responsibility.

There being no cause for the dismissal of the instant case, the Court now proceeds to determine whether respondents have indeed violated the Code of Professional Responsibility.

We note that the essential allegations of the Complaint-Affidavit have already been admitted by respondents. In the Comment[36] they submitted to

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[34] Id.
[35] *Coronel v. Cunanan*, A.C. No. 6738, 12 August 2015.
[36] *Rollo*, pp. 101-115.

this Court, they even reproduced the pertinent portions[37] of their pleadings that contained the allegations of antedating. Accordingly, the only question left for us to resolve is whether their conduct violates the ethical code of the profession.

After a thorough evaluation of the pleadings filed by the parties and the Report and Recommendation of Commissioner Limpingco, the Court finds respondents guilty of violating Canons 8[38] and 10[39] of the Code of Professional Responsibility.

This Court has repeatedly urged lawyers to utilize only respectful and temperate language in the preparation of pleadings, in keeping with the dignity of the legal profession.[40] Their arguments, whether written or oral, should be gracious to both the court and the opposing counsel and should consist only of such words as may be properly addressed by one honorable member of the bar to another.[41] In this case, respondents twice accused complainant of antedating a petition it had filed with the DOJ without any proof whatsoever. This allegation of impropriety undoubtedly brought complainant and its lawyers into disrepute. The accusation also tended to mislead the courts, as it was made without hesitation notwithstanding the absence of any evidentiary support. The Court cannot condone this irresponsible and unprofessional behavior.

That the statements conveyed the perception by respondents of the events that transpired during the scheduled arraignment and their "truthful belief regarding a perceived irregularity" in the filing of the Petition is not an excuse. As this Court emphasized in *Re: Supreme Court Resolution Dated 28 April 2003 in G.R. Nos. 145817 & 145822*:

> The Court cannot countenance the ease with which lawyers, in the hopes of strengthening their cause in a motion for inhibition, make grave and

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[37] Id. at 105-106.

[38] Canon 8 of the Code of Professional Responsibility states:

> CANON 8 - A LAWYER SHALL CONDUCT HIMSELF WITH COURTESY, FAIRNESS AND CANDOR TOWARD HIS PROFESSIONAL COLLEAGUES, AND SHALL AVOID HARASSING TACTICS AGAINST OPPOSING COUNSEL.
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> Rule 8.01 - A lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper.
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> Rule 8.02 - A lawyer shall not, directly or indirectly, encroach upon the professional employment of another lawyer; however, it is the right of any lawyer, without fear or favor, to give proper advice and assistance to those seeking relief against unfaithful or neglectful counsel.

[39] Canon 10 of the Code of Professional Responsibility provides:

> CANON 10 - A LAWYER OWES CANDOR, FAIRNESS AND GOOD FAITH TO THE COURT.
>
> Rule 10.01 - A lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead, or allow the Court to be misled by any artifice.
>
> Rule 10.02 - A lawyer shall not knowingly misquote or misrepresent the contents of paper, the language or the argument of opposing counsel, or the text of a decision or authority, or knowingly cite as law a provision already rendered inoperative by repeal or amendment, or assert as a fact that which has not been proved.
>
> Rule 10.03 - A lawyer shall observe the rules of procedure and shall not misuse them to defeat the ends of justice.

[40] *Torres v. Javier*, 507 Phil. 397-409 (2005).

[41] *Hueysuwan-Florido v. Florido*, 465 Phil. 1-8 (2004).

> unfounded accusations of unethical conduct or even wrongdoing against other members of the legal profession. It is the duty of members of the Bar to abstain from all offensive personality and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justness of the cause with which they are charged. [42]

Respondents' defense of absolute privilege is likewise untenable. Indulging in offensive personalities in the course of judicial proceedings constitutes unprofessional conduct subject to disciplinary action, even if the publication thereof is privileged.[43] While lawyers may enjoy immunity from civil and criminal liability for privileged statements made in their pleadings, they remain subject to this Court's supervisory and disciplinary powers for lapses in the observance of their duty as members of the legal profession.[44]

We believe, though, that the use of intemperate and abusive language does not merit the ultimate penalty of disbarment.[45] Nonetheless, respondents should be disciplined for violating the Code of Professional Responsibility and sternly warned that the Court will deal with future similar conduct more severely.[46]

A final note. We find it necessary to remind the IBP of its duty to judiciously investigate and evaluate each and every disciplinary action referred to it by this Court. In making its recommendations, the IBP should bear in mind the purpose of disciplinary proceedings against members of the bar – to maintain the integrity of the legal profession for the sake of public interest. Needless to state, the Court will not look with favor upon a recommendation based entirely on technical and procedural grounds.

WHEREFORE, premises considered, the Resolution dated 22 March 2014 issued by the IBP Board of Governors is hereby **SET ASIDE.** Attys. Restituto Lazaro and Rodel Morta are hereby **ADMONISHED** to use only respectful and temperate language in the preparation of pleadings and to be more circumspect in dealing with their professional colleagues. They are likewise **STERNLY WARNED** that a commission of the same or similar acts in the future shall be dealt with more severely.

SO ORDERED.

MARIA LOURDES P. A. SERENO
Chief Justice, Chairperson

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[42] A.C. No. 6332, 17 April 2012.
[43] *Asa v. Castillo*, 532 Phil. 9-28 (2006).
[44] *Lubiano v. Gordolla*, 201 Phil. 47-52 (1982).
[45] See: *Nuñez v. Astorga*, 492 Phil. 450-460 (2005).
[46] See: *Noble III v. Ailes*, A.C. No. 10628 (Resolution), 1 July 2015.

WE CONCUR:

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

(On official leave)
LUCAS P. BERSAMIN
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice