



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **09 September 2020** which reads as follows:*

“A.C. No. 10601 (*Atty. Mariano R. Pefianco v. Atty. Manuel C. Bahena, Jr. and Atty. Lyna B. Brotarlo-Pasco*) - This is a Complaint for Disbarment¹ filed by complainant Atty. Mariano R. Pefianco (Atty. Pefianco) against respondents Atty. Manuel C. Bahena, Jr. (Atty. Bahena), and Atty. Lyna B. Brotarlo-Pasco (Atty. Brotarlo-Pasco; collectively, respondents) for alleged violation of the Code of Professional Responsibility (CPR) and the Lawyer’s Oath.

The Facts

According to Atty. Pefianco, the respondents violated Canon 8 of the CPR when they made serious allegations against him in their Comment² to the Petition for *Certiorari*³ before the Court of Appeals (CA) in CA-G.R. SP No. 08160,⁴ where they raised as an “issue” Atty. Pefianco’s suspension from the practice of law.⁵ Atty. Pefianco argued that raising such “issue” would not advance the interests of their client in CA-G.R. SP No. 08160. He added that in his nearly 50 years of professional life, he has never been suspended from the practice of law.⁶

Conversely, herein respondents averred that Atty. Pefianco was suspended from the practice of law for one year pursuant to the Court’s August 1, 2012 Resolution⁷ in A.C. No. 6116;⁸ November 14, 2012

¹ *Rollo*, pp. 4-7.

² *Id.* at 18-29.

³ *Id.* at 8-17.

⁴ Captioned as *Teresita Pinero v. JGM Finance Corporation*.

⁵ *Rollo*, pp. 23-24.

⁶ *Id.* at 5.

⁷ *Id.* at 114-119; penned by Associate Justice Estela M. Perlas-Bernabe and concurred in by Associate Justices Presbitero J. Velasco, Jr., Diosdado M. Peralta (now Chief Justice), Lucas P. Bersamin (now retired Chief Justice) and Roberto A. Abad.

⁸ Captioned as *Tumbokon v. Atty. Pefianco*.

Resolution⁹ which denied with finality Atty. Pefianco's motion for reconsideration of his suspension; as well as the March 14, 2014 Circular No. 40-2014¹⁰ of the Office of the Court Administrator (OCA).¹¹ Thus, the respondents posited that since Atty. Pefianco had no authority to practice law at the time the Petition for *Certiorari* was signed and filed, the said petition should be deemed as not filed.¹² Moreover, they asserted that the statements in their Comment to the *certiorari* petition were made in the course of judicial proceedings and should be considered as privileged, as these were made in good faith and relevant to the disposition of the issues.¹³

On July 4, 2006, the Court referred the case at bench to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.¹⁴

Report and Recommendation of the IBP:

In a Report and Recommendation¹⁵ dated September 22, 2017, the Investigating Commissioner recommended the dismissal of the administrative complaint there being no violation of the CPR or the Lawyer's Oath committed by the respondents.¹⁶

The Investigating Commissioner found nothing irregular or unethical in the act of Atty. Brotarlo-Pasco when she mentioned in the Comment that Atty. Pefianco was suspended from practicing law at the time he filed the *certiorari* petition. The Investigating Commissioner added that Atty. Pefianco employed trickery when he filed the Petition for *Certiorari* for his client during the period of his suspension. This is considering that the restoration of the privilege to practice law is not automatic and requires a resolution from the Supreme Court specifying that the said suspension has been lifted.¹⁷

In view of these, the Investigating Commissioner concluded that Atty. Brotarlo-Pasco did not act contrary to Canon 8 of the CPR. Likewise, her act cannot be considered as a harassing tactic or discourtesy to a fellow lawyer as in fact, it is her duty not to do any falsehood, nor consent to the doing of any in court.¹⁸ Additionally, such action cannot be considered as a breach of the Lawyer's Oath because Atty. Brotarlo-Pasco sufficiently proved her allegation when she presented the OCA Circular as evidence of Atty. Pefianco's suspension. The Investigating Commissioner added that respondents' Comment submitted before the CA is in the nature of a privileged

⁹ This is not attached in the records.

¹⁰ *Rollo*, p. 101.

¹¹ *Id.* at 23-24, 67.

¹² *Id.* at 23.

¹³ *Id.* at 70-72, 293.

¹⁴ *Id.* at 125.

¹⁵ *Id.* at 292-295; penned by Commissioner Abelardo P. De Jesus.

¹⁶ *Id.* at 295.

¹⁷ *Id.* at 294.

¹⁸ *Id.* at 295.

communication. Thus, Atty. Brotarlo-Pasco cannot be held liable for her actions.

Similarly, Atty. Bahena should not be held accountable since he did not sign the Comment even though his name was indicated in the signing page as the head of the office which prepared and submitted the Comment to the appellate court.¹⁹

Finally, the Investigating Commissioner explained that the death of Atty. Pefianco during the pendency of the case is not a ground to suspend or terminate the proceedings. This is because an administrative case against a member of the Bar is *sui generis* and is considered as a valid inquiry by the Court to ascertain if a lawyer is still fit to enjoy the privilege to practice the law.²⁰

In a Resolution²¹ dated August 29, 2018, the IBP Board of Governors resolved to adopt the findings of fact and the recommendation of the Investigating Commissioner to dismiss the complaint.

The Ruling of the Court

The Court adopts the findings and approves the recommendation of the IBP to dismiss the instant complaint for disbarment against the respondents.

Apparently, on January 3, 2013, Atty. Pefianco received a copy of the Resolution of the Court dated November 14, 2012 which ordered his suspension from the practice of law for one year. Hence, he was effectively suspended for a year starting on January 3, 2013, until the Court decrees the lifting of his suspension. As pointed out by the respondents, Atty. Pefianco signed the Petition for *Certiorari* on December 12, 2013 and the *jurat* on December 19, 2013. Thereafter, he filed the *certiorari* petition on December 20, 2013, which is clearly within the period of his suspension.

Considering all these, the respondents did not violate either the Lawyer's Oath or the CPR when they apprised the CA of Atty. Pefianco's standing as a lawyer at the time he filed the *certiorari* petition. Although Atty. Pefianco's suspension is considered as within judicial notice,²² Atty. Brotarlo-Pasco in fact aided the appellate court in its disposition of the *certiorari* petition while protecting the interests of her client. In relation to this, Canon 8 of the CPR provides:

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 290-291.

²² RULES OF COURT, Rule 129, § 1; *Commission on Higher Education v. Atty. Dasig*, 594 Phil. 650-665 (2008).

CANON 8 – A LAWYER SHALL CONDUCT HIMSELF WITH COURTESY, FAIRNESS AND CANDOR TOWARDS HIS PROFESSIONAL COLLEAGUES, AND SHALL AVOID HARASSING TACTICS AGAINST OPPOSING COUNSEL.

Rule 8.01 – A lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper.

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.

We concur with the IBP's finding that the respondents acted within the bounds of the rules and that the statements in the Comment were intended merely to advance their client's position in the *certiorari* petition. They did not employ abusive behavior or harassing tactics; on the contrary, they correctly pointed out that Atty. Pefianco had no authority to engage in the practice of law during the period of his suspension, absent any resolution from the Court formally lifting his suspension. Moreover, the respondents committed none of the grounds for disbarment under Section 27, Rule 138²³ of the Rules of Court.²⁴ Rather, the respondents' actions are in accordance with Canons 17 and 19 of the CPR, as follows:

CANON 17 – A LAWYER OWES FIDELITY TO THE CAUSE OF HIS CLIENT AND HE SHALL BE MINDFUL OF THE TRUST AND CONFIDENCE REPOSED IN HIM.

CANON 19 – A LAWYER SHALL REPRESENT HIS CLIENT WITH ZEAL WITHIN THE BOUNDS OF THE LAW.

Additionally, the statements in the Comment should indeed be considered as privileged information.²⁵ In light of these findings, the respondents cannot be disbarred or even suspended based merely on Atty. Pefianco's allegations without substantial proof and legal basis. Besides, "[a]s a rule, this Court exercises the power to disbar with great caution. Being the most severe form of disciplinary sanction, it is imposed only for the most imperative reasons and in clear cases of misconduct affecting the standing and

²³ SEC. 27. *Disbarment or suspension of attorneys by Supreme Court; grounds therefor.* – A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a willful disobedience of any lawful order of a superior court, or for corruptly or willfully appearing as an attorney for a party to a case without authority to do so. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.

²⁴ *Re: SC Decision dated May 20, 2008 in G.R. No. 161455 under Rule 139-B of the Rules of Court v. Atty. Pactolin*, 686 Phil. 351, 355 (2012).

²⁵ *See Centeno v. Atty. Paguio*, A.C. No. 11667 (Notice), December 10, 2018.

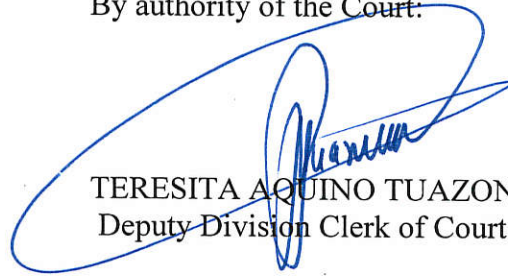
moral character of the lawyer as an officer of the court and a member of the bar.”²⁶

In view of the foregoing, the Court finds that Atty. Pefianco did not present substantial evidence to show that herein respondents violated the Lawyer’s Oath and the CPR.

WHEREFORE, the Complaint for Disbarment of Atty. Mariano R. Pefianco against Atty. Manuel C. Bahena, Jr. and Atty. Lyna B. Brotarlo-Pasco is hereby **DISMISSED**.

SO ORDERED.” (Inting, J., on official leave; Baltazar-Padilla, J., on leave)

By authority of the Court:


TERESITA AQUINO TUAZON
Deputy Division Clerk of Court *p 9/12*

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²⁶ Re: SC Decision dated May 20, 2008 in G.R. No. 161455 under Rule 139-B of the Rules of Court v. Atty. Pactolin, supra.