



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **March 24, 2021** which reads as follows:*

“A.C. No. 10852 [Formerly CBD Case No. 16-5051] (Evangeline C. Cruz v. City Prosecutor Jorge G. Catalan, Jr., Assistant City Prosecutor Danilo C. Emelo and Senior Assistant City Prosecutor Amador Y. Pineda). – Before Us is an administrative complaint¹ for disbarment filed by Evangeline C. Cruz against respondents City Prosecutor Jorge G. Catalan, Jr., Assistant City Prosecutor (ACP) Danilo C. Emelo and Senior Assistant City Prosecutor (SACP) Amador Y. Pineda for gross ignorance of the law, dereliction of duty, and dishonesty, relative to the case of perjury and subornation of perjury, which complainant filed before the Office of the City Prosecutor, Makati City.

Complainant averred that on October 11, 2013, she filed a complaint for perjury against Tirso Valentos Lagasca and subornation of perjury against the spouses Marilen Raman and Muttu Maran Raman before the Office of the City Prosecutor in Makati City, docketed as NPS No. XV-05-INV-13J-3926. Prior to the filing of the complaint for perjury, a complaint for Use of Falsified Document docketed as NPS No. XV-05-INV-13F-2334, was also filed before the Office of the City Prosecutor, Makati City.

Paragraph 8 of Lagasca’s Affidavit, he declared the following:

8. The occupants of the Subject Property, myself included, agreed to meet with the Spouses Raman. A dialogue was then held at the Barangay Hall of Barangay Lapaz Makati City around November of 2012 where we were informed by the Spouses Raman that they purchased the Subject Property from its original owners.

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¹ Rollo, pp. 2-9.

We were shown the authentic Transfer Certificate of Title in the name of the Spouses Raman with TCT No. 006-2013000019 issued by the Register of Deeds of the City of Makati. We were also offered a financial package by the Spouses Raman in the event we choose to leave the Subject Property peacefully and amicably.²

In paragraphs 21 and 22 of Lagasca's Counter-Affidavit in NPS No. XV-05-INV-13J-3926, he declared the following:

21. As to Complainant's claim that I made false statements relating to the Spouses Raman allegedly showing me their title to the property, TCT No. 006-2013000019, during the meeting on 22 November 2013, the same is a mere attempt on the part of the Complainant to deceive this Honorable Office into believing that I made false statements.

22. A careful review of my affidavit will show that I was merely narrating chronologically the events that transpired before, during and after I met the Spouses Raman and vacated the Subject Property. I merely made mention of our meeting held last 22 November 2013. And that after the meeting, [the] Spouses Raman showed me their title after it was issued by the Register of Deeds sometime January 2013. After which, I decided to accept their offer. I only made truthful statements. Therefore, Complainant's bare allegations that I made false statements and committed perjury do not merit consideration.³

Complainant alleged that Lagasca committed the crime of perjury when the latter made conflicting statements in his Affidavit in NPS No. XV-05-INV13F-2334 and in his Counter-Affidavit in NPS No. XV-05-INV-13J-3926.

The complaint for perjury was assigned for preliminary investigation before ACP Emelo who issued a Resolution recommending the dismissal of the complaint for lack of *prima facie* case. Aggrieved, complainant filed a Motion for Reconsideration of the Resolution. On June 18, 2017, an Order denying the Motion for Reconsideration was issued by SACP Pineda and duly approved by City Prosecutor Catalan, Jr.

Complainant averred that the refusal of respondents to file the proper charges for the crimes charged in the complaint is tantamount to gross ignorance of the law, dereliction of duty and dishonesty and, hence, respondents should be meted the penalty of disbarment.

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² *Id.* at 24.

³ *Id.* at 35.

In their Comment⁴ dated January 25, 2016, respondents contend that they are not guilty of gross ignorance of the law in rendering the assailed Resolution. Respondents averred that complainant did not clearly state the form of injury she may have suffered from the act of respondents in dismissing her complaint, except that maybe she could not accept the findings of the office which was adverse to her.

Respondents further asserted that complainant should not be allowed to use the disbarment complaint to stage a collateral attack on the assailed Resolution. They asseverated that after a scrutiny of the records they found insufficiency of evidence to prove the presence of perjurious statements. The assertions of complainant are obscure, which cannot be valid basis to file an Information.

In its Report and Recommendation⁵ dated April 18, 2017, the IBP Investigating Commissioner recommended the dismissal of the instant case for lack of merit.

The Investigating Commissioner observed that complainant failed to present clear, convincing and satisfactory proof that the respondent public prosecutors committed gross ignorance of the law and dereliction of duty with dishonesty. He found that the determination of probable cause during a preliminary investigation is a function that belongs to the public prosecutors, the correctness of which is a matter that the court does not and may not be compelled to pass upon. Further, he opined that since the motion for reconsideration of complainant was denied, complainant should have elevated the adverse resolution to the Secretary of the Department of Justice by way of petition for review instead of the instant complaint for disbarment.

On October 12, 2019, the IBP-Commission on Bar Discipline (*IBP-CBD*) Board of Governors issued a Resolution which approved and adopted the Report and Recommendation of the Investigating Commissioner, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, dismissing the complaint against respondents for lack of merit.

Ruling

After a careful review of the records of the case, We resolve to dismiss the instant administrative case against respondents for lack of jurisdiction.

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⁴ *Id.* at 62-72.

⁵ *Rollo*, unpaginated.

Well-entrenched in our jurisprudence is the rule that courts do not interfere with the prosecutor's conduct of a preliminary investigation. The prosecutor's determination of probable cause is solely within his or her discretion. Prosecutors are given a wide latitude of discretion to determine whether an information should be filed in court or whether the complaint should be dismissed.⁶

In their Comment, respondents argued that since they are being charged for an act they committed in relation to the discharge of their duties as prosecutors, the remedy of disbarment being sought by complainant is inappropriate.

We agree.

The Court has held that a lawyer who holds a government office may not be disciplined as a member of the bar for misconduct in the discharge of his duties as a government official. However, if that misconduct as a government official is of such a character as to affect his qualification as a lawyer or to show moral delinquency, then he may be disciplined as a member of the bar on such ground.⁷

In the case of *Trovela v. Robles*,⁸ the complainant therein filed a disbarment complaint against Assistant Prosecutor Michael B. Robles for issuing a resolution recommending the dismissal of his complaint for *estafa* for insufficiency of evidence; and against Prosecutor II Emmanuel L. Obuñgen and City Prosecutor Jacinto G. Ang, for approving the recommendation of dismissal. The Court dismissed the disbarment complaint and held that the IBP has no jurisdiction to investigate government lawyers in the exercise of their official functions, to wit:

The acts complained of undoubtedly arose from the respondents' performance or discharge of official duties as prosecutors of the Department of Justice. Hence, the authority to discipline respondents Robles, Obuñgen, Ang and Arellano exclusively pertained to their superior, the Secretary of Justice. In the case of Secretary De Lima, the authority to discipline pertained to the President. In either case, the authority may also pertain to the Office of the Ombudsman, which similarly exercises disciplinary jurisdiction over them as public officials pursuant to Section 15, paragraph 1, of Republic Act No. 6770 (*Ombudsman Act of 1989*). Indeed, **the accountability of respondents as officials performing or discharging their official duties as lawyers of the**

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⁶ *Maza, et al. v. Judge Turla, et al.*, 805 Phil. 736, 759 (2017).

⁷ *Gonzales-Austria v. Judge Abaya*, 257 Phil. 645, 660 (1989).

⁸ *Trovela v. Robles*, A.C. No. 11550, June 4, 2018.

Government is always to be differentiated from their accountability as members of the Philippine Bar. The IBP has no jurisdiction to investigate them as such lawyers.

The Court has recently made this clear in *Alicias, Jr. v. Macatangay* by holding as follows:

Republic Act No. 6770 (R.A. No. 6770), otherwise known as “The Ombudsman Act of 1989,” prescribes the jurisdiction of the Office of the Ombudsman. Section 15, paragraph 1 of R.A. No. 6770 provides:

Section 15. *Powers, Functions and Duties.* — The Office of the Ombudsman shall have the following powers, functions and duties:

(1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of his primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases.

The 1987 Constitution clothes the Office of the Ombudsman with the administrative disciplinary authority to investigate and prosecute any act or omission of any government official when such act or omission appears to be illegal, unjust, improper, or inefficient. The Office of the Ombudsman is the government agency responsible for enforcing administrative, civil, and criminal liability of government officials “in every case where the evidence warrants in order to promote efficient service by the Government to the people.”⁹

In the case at bar, the charges against the respondents arose from the discharge of their official duties as prosecutors, specifically, the executive determination of probable cause. Considering that respondents’ act of dismissing the complaint is an exercise of their official duty, it follows that the act complained of is within the disciplinary jurisdiction of the Office of the Ombudsman. The IBP has

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⁹ Id. (Citation omitted; emphasis ours)

no jurisdiction to investigate them as members of the Bar. Moreover, it is elementary that in administrative proceedings, the complainant has the burden of proving, by substantial evidence, the allegations in the complaint.¹⁰ Corollarily, absent any showing that the dismissal of the complaint is of such a character as to affect respondents' qualification as lawyers or to show moral delinquency, the Court is prevented from exercising its disciplinary jurisdiction over respondents as members of the Bar.

WHEREFORE, the Court **DISMISSES** the instant administrative case against City Prosecutor Jorge G. Catalan, Jr., Assistant City Prosecutor Danilo C. Emelo, and Senior Assistant City Prosecutor Amador Y. Pineda for lack of jurisdiction.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *mcb*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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¹⁰ *Sanidad v. Aguas*, A.C. No. 9838, June 10, 2019.

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