



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated February 17, 2021, which reads as follows:

“A.C. No. 12811 (*Atty. Raymund Jorge A. Mercado v. Atty. Raul Panfilo R. Cariño and Atty. Cynthia Sulit-Portugaleza*). - This is a Complaint¹ filed by complainant Atty. Raymund Jorge A. Mercado (Atty. Mercado) before the Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP) against respondents Attys. Raul Panfilo R. Cariño (Atty. Cariño) and Cynthia Sulit-Portugaleza (Atty. Sulit-Portugaleza) for violating the Code of Professional Responsibility (CPR).

The Facts:

Atty. Mercado is the counsel of the spouses Wilson Go and Jean Theresa Go (spouses Go) in Civil Case No. 2008-14285 which was filed before the Regional Trial Court (RTC), Branch 40 of Dumaguete City and presided by Judge Gerardo Paguio, Jr. (Judge Paguio). The spouses Go, represented by Atty. Mercado, entered into a Compromise Agreement² with the Bank of Commerce which the RTC approved through a Partial Judgment.³

Prior to the execution of the Compromise Agreement, the bank filed a Third-Party Complaint⁴ against the spouses Domingo Tiu, Jr. (Domingo) and Agnes Tiu (Agnes; collectively, spouses Tiu), represented by herein respondents, Atty. Cariño and Atty. Sulit-Portugaleza.⁵

One of the conditions in the Compromise Agreement is that the spouses Go agreed to cooperate with the Bank to collect from the spouses Tiu. Apparently, Atty. Mercado was the former lawyer of Agnes with regard to her employment with the Bank of Commerce.⁶

¹ Rollo, pp. 2-8.

² Not attached in the records.

³ Rollo, p. 204.

⁴ Not attached in the records.

⁵ Rollo, p. 204.

⁶ Id. at 204-205.

Claiming that Atty. Mercado had a conflict of interest due to his participation in the Compromise Agreement and his prior engagement as former counsel of Agnec against the Bank of Commerce, Domingo filed a contempt charge⁷ against Atty. Mercado and the spouses Go which was docketed as Sp. Civil Case No. 2012-14752 and coincidentally raffled to Branch 40 of the RTC of Dumaguete City. Domingo also filed an administrative case against Atty. Mercado which was docketed as CBD Case No. 13-3728.⁸ Although Attys. Cariño and Sulit-Portugaleza were not the lawyers of Domingo in the said administrative case, Atty. Mercado alleged in his instant complaint that “it is apparent though through the verbiage used in CBD Case no. 13-3728 that Mr. [Domingo Tiu, Jr.] is duly assisted by a lawyer [and who else but the respondents herein].”⁹

While Civil Case No. 2008-14285 and Sp. Civil Case No. 2012-14752 were still both pending before Branch 40 of the RTC of Dumaguete City, Domingo sent a letter¹⁰ dated August 7, 2013 to herein respondents and furnished Judge Paguio with a copy. Domingo alleged that Judge Paguio is biased and has already prejudged the cases and then asked the respondents to seek the annulment of the Partial Judgment earlier issued by the trial court.¹¹

On August 15, 2013, during the preliminary conference in Sp. Civil Case No. 2012-14752, Atty. Mercado learned about Domingo’s letter. This led to a heated argument between the two.¹² Consequently, Atty. Mercado filed a Motion for Admonition¹³ against Domingo. In addition, Atty. Mercado filed complaints for Libel¹⁴ and Intriguing Against Honor¹⁵ against Domingo¹⁶ which were resolved in favor of Atty. Mercado.¹⁷

Meanwhile, Judge Paguio voluntarily inhibited from Civil Case No. 2008-14285 and Sp. Civil Case No. 20012-14752 by virtue of an Order¹⁸ dated August 22, 2013. The judge stated that although the Partial Judgment was based on a Compromise Agreement, herein respondents did not properly explain to Domingo the legal consequences of such ruling, considering his (Domingo’s) inadequate layman’s understanding of the law as borne by his actuations. In any case, Judge Paguio inhibited to preserve the integrity of the court. Thereafter, the cases were re-raffled to Branch 38 of the RTC of Dumaguete City presided by Judge Cenon Voltaire B. Repollo (Judge Repollo).

⁷ Not attached in the records.

⁸ *Rollo*, pp. 73-90.

⁹ *Id.* at 3, 205.

¹⁰ Not attached in the records.

¹¹ *Rollo*, p. 205.

¹² *Id.* at 30.

¹³ Not attached in the records.

¹⁴ *Rollo*, pp. 9-11.

¹⁵ *Id.* at 12-14.

¹⁶ *Id.* at 205.

¹⁷ *Id.* at 3.

¹⁸ *Id.* at 15-17.

However, on September 17, 2013, the spouses Tiu, through respondents, filed a Motion for Inhibition¹⁹ against Judge Repollo.²⁰ The motion alleged that Atty. Mercado gave special accommodation and lavish service to Judge Repollo during a viewing of the Pacquiao-Mosley boxing fight which was aired at Atty. Mercado's restaurant. Thus, this information created serious suspicion that such special treatment would affect Judge Repollo's resolution of the cases.²¹ For this reason, Judge Repollo inhibited through an Order²² dated December 18, 2013, although he denied receiving any special treatment. Judge Repollo also stated that the movants, the spouses Tiu and the respondents, did not substantiate their claims. The cases were re-raffled to other branches of the RTC.²³

Atty. Mercado cited the circumstances surrounding the inhibition of Judges Paguio and Repollo as bases for his claim that Attys. Cariño and Sulit-Portugaleza violated Canons 1 (Rules 1.01 and 1.02), 10 (Rule 10.1), and 11 (Rule 11.04) of the CPR. Likewise, he alleged that Domingo's filing of contempt and disbarment cases against him resulted from the respondents' instigation, although they do not appear on record as counsel.²⁴

Conversely, Attys. Cariño and Sulit-Portugaleza maintained that Atty. Mercado's claims are based on mere conjectures, suspicions, and surmises.²⁵ They asserted that they had no knowledge that Domingo intended to send the letter to Judge Paguio and that they have explained to him (Domingo) the legal consequences of questioning the Partial Judgment. They averred that before they filed the Motion for Inhibition against Judge Repollo, they clarified Domingo's perception of bias in relation to the supposed special treatment which the magistrate received at Atty. Mercado's restaurant.²⁶ Thus, they deemed it their duty to protect Domingo's interests by filing the said motion, considering that any action by Judge Repollo would be viewed by Domingo with unending suspicion.²⁷

Moreover, the respondents contended that Atty. Mercado should be disciplinarily sanctioned based on Canons 8 and 17,²⁸ as well as Canons 10 and 22,²⁹ of the CPR because of his baseless accusations and for his own acts of misconduct.

¹⁹ Id. at 18-20.

²⁰ Id. at 206.

²¹ Id.

²² Id. at 21-22.

²³ Id. at 51, 206.

²⁴ Id. at 206.

²⁵ Id. at 49, 52-53.

²⁶ Id. at 55.

²⁷ Id. at 55-56.

²⁸ Id. at 58.

²⁹ Id. at 60-61.

**Report and Recommendation of the
Integrated Bar of the Philippines:**

In a Report and Recommendation³⁰ dated January 23, 2015, the Investigating Commissioner of the IBP found that Judge Paguio's inhibition was based on the letter independently prepared by Domingo and that there is no evidence to demonstrate that the respondents prompted him to write it. Although Judge Paguio mentioned that the respondents did not adequately explain the consequences of the ruling in the Partial Judgment to Domingo, there was no sufficient proof showing that they did not actually clear the matter with him. Ergo, although the respondents could advise Domingo on his available options, they could not control his choices and subsequent acts. Thus, the respondents could not have committed an unethical act as it was not proven that they endorsed activities which would defy the law or lessen confidence in the legal system under Rule 1.01 of the CPR.³¹

Similarly, the respondents could not be blamed for Domingo's act of filing the contempt and disbarment cases against Atty. Mercado as it was his (Domingo's) independent choice. Hence, there is a presumption that the respondents performed their duties in accordance with their oath.³²

However, regarding Judge Repollo, it appeared from the records that respondents themselves filed the Motion for Inhibition. The Investigating Commissioner found that the fact that Judge Repollo watched a boxing match and ate breakfast in a restaurant owned by Atty. Mercado is not sufficient to impute bias upon the magistrate. It seemed that the spouses Tiu and the respondents did not have personal knowledge of what transpired since they were not present at the time. Thus, it was emphasized that criticisms directed at the courts should be made within the bounds of decency and propriety.³³

The Investigating Commissioner recommended that Attys. Cariño and Silit-Portugaleza be reprimanded for violating Rule 11.04³⁴ of the CPR since they unnecessarily imputed bias upon Judge Repollo.³⁵

In a Resolution³⁶ dated June 20, 2015, the IBP Board of Governors (BOG) resolved to adopt and approve the findings of the Investigating Commissioner but modified the penalty from reprimand to suspension of three months from the practice of law.

³⁰ Id. at 204-208; penned by Commissioner Portia A. Martinez-Panergo.

³¹ Id. at 207.

³² Id.

³³ Id. at 207-208.

³⁴ Rule 11.04. A lawyer shall not attribute to a Judge motives not supported by the record or have no materiality to the case.

³⁵ *Rollo*, p. 208.

³⁶ Id. at 203; Resolution No. XXI-2015-561.

Notably, Domingo issued a public apology to Atty. Mercado for the “inconvenience and trouble [he has] caused him and his family as a result of the inaccurate and false accusations [he has] made.”³⁷

Nonetheless, the respondents asked for reconsideration³⁸ of the IBP-BOG’s Resolution, stating that the imputation of perceptive bias was not made by them but by the spouses Tiu, particularly Domingo, who in turn stated that he personally saw the scene at the restaurant.³⁹ As counsel, the respondents opted to ventilate the apprehensions entertained by their clients, and they only filed the Motion for Inhibition after diligently asking probing questions upon Domingo. They added that their client’s suspicion and perception of bias would cause Domingo to question every action which the trial court might take, which in turn could cause the unnecessary delay in the resolution of the cases. Thus, the respondents believed that the motion was necessary to forestall this concern.⁴⁰

The respondents averred that they filed the Motion for Inhibition in good faith, without malice or ill-motive, and that it was not intended to disrespect the integrity of Judge Repollo and the courts. They added that this was the first time that they filed a motion of such nature, and that in their more than 23 years of legal practice, they have not been sanctioned for any unprofessional act. Additionally, they performed their duties with dedication to protect the interest of their clients as well as the courts.⁴¹

They asserted that Atty. Mercado’s charges of impropriety against them are mostly founded on mere suspicions which are highly irregular, irresponsible, and uncalled for. They averred that Atty. Mercado’s baseless charge against them is a form of harassment employed by a colleague against another, in contravention of Canons 8, 10, and 17 of the CPR.⁴² They added that according to Canon 22 of the CPR, the conduct of a lawyer before the court and with other lawyers should be characterized by candor and fairness.⁴³

The IBP-BOG granted the respondents’ motion and recommended the dismissal of the instant Complaint in a Resolution⁴⁴ dated March 1, 2017. It found that there was no proof that the respondents had a hand in the filing of the disbarment case against Atty. Mercado.

In view of this, the IBP-BOG issued an Extended Resolution⁴⁵ dated June 22, 2019 wherein it noted that the language, manner of presentation and expression in the Motion for Inhibition against Judge Repollo were not

³⁷ Id. at 227-230; dated January 18, 2016.

³⁸ Id. at 209-215.

³⁹ Id. at 210.

⁴⁰ Id.

⁴¹ Id. at 211.

⁴² Id. at 212.

⁴³ Id. at 213.

⁴⁴ Id. at 234-235.

⁴⁵ Id. at 236-238; penned by Leo B. Malagar, Assistant Director for Bar Discipline, for the BOG.

couched in a disrespectful, ill-mannered or offensive language. Moreover, it found that Atty. Mercado's allegations were founded on mere suspicions; moreover, he failed to prove that the respondents participated in the filing of an administrative case against him. In any case, it opined that providing assistance to a disgruntled client against a former lawyer does not constitute as an act warranting administrative liability and disciplinary action.⁴⁶

Our Ruling

The Court resolves to dismiss the instant complaint for disbarment against the lawyers-respondents.

We find that Atty. Mercado's assertions did not reach the threshold of substantial evidence⁴⁷ which would merit disciplinary action against the respondents. The details provided in the respondents' Motion for Inhibition were placed inside quotation marks, immediately followed by Domingo's signature. This observation suggests that the information strictly came from Domingo and not from the respondents. In any case, "the Court does not find the language used in the subject motion for [inhibition] to be offensive, abusive, malicious, or intemperate in any way. It did not spill over the walls of decency or propriety."⁴⁸

Jurisprudence instructs that "an attorney enjoys the legal presumption that he is innocent of the charges against him until the contrary is proved, and that as an officer of the Court, he is presumed to have performed his duties in accordance with his oath."⁴⁹ In disbarment proceedings, the quantum of proof is substantial evidence and the burden of proof is on the complainant to establish the allegations in his complaint.⁵⁰ Unfortunately, Atty. Mercado failed to discharge this burden successfully since he relied on unsubstantiated allegations. Thus, the presumption that the respondents performed their duties pursuant to their oath stands.

To stress, "the basic rule is that reliance on mere allegations, conjectures and suppositions will leave an administrative complaint with no leg to stand on."⁵¹ Otherwise stated, "charges based on mere suspicion and speculation likewise cannot be given credence."⁵² Given that Atty. Mercado failed to prove his claims through substantial evidence, the Court has no basis

⁴⁶ Id. at 238.

⁴⁷ 2019 Amendments to the 1989 Revised Rules on Evidence, Rule 133, § 6: "That amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."; See *Tan v. Alvarico*, A.C. No. 10933, November 3, 2020.

⁴⁸ *Zumora v. Mahinay*, A.C. No. 12622, February 10, 2020 citing *In the Matter of the Proceedings for Disciplinary Action against Atty. Almacen, et. al. v. Yaptinchay*, 142 Phil. 353, 371 (1970).

⁴⁹ *Tan v. Alvarico*, supra, citing *B&A Tower Condominium Corporation v. Reyes*, A.C. No. 11944, June 20, 2018 and *Zara v. Joyas*, A.C. No. 10994, June 10, 2019.

⁵⁰ Id.

⁵¹ Id., citing *Zara v. Joyas*, A.C. No. 10994, June 10, 2019.

⁵² *Aguirre v. Reyes*, A.C. No. 4355, January 8, 2020 citing *Cabas v. Sususeco*, 787 Phil. 167, 174 (2016).

to mete out a disbarment order, much less a suspension or reprimand⁵³ upon the respondents.

Regardless, the Court finds that the respondents did not commit any of the grounds for disbarment according to Section 27, Rule 138⁵⁴ of the Rules of Court.⁵⁵ Reasonably, Canons 17 and 19 of the CPR supported their actions, 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.

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

The lawyers-respondents merely performed their duty to the Spouses Tiu to file pleadings within the bounds of law to protect their clients' interests. They should not be hastily penalized for doing so, especially when the Motion for Inhibition was not worded in a disrespectful manner. Automatically treating a motion for inhibition as a form of impertinent conduct by lawyers against judges would render the purpose of such motion useless. Even so, there is a need to study matters of the same nature on a case-to-case basis, since it is possible that a motion for inhibition could seek to unduly attack the integrity of the court. Yet, this is not the case here.

On the other hand, we note that Atty. Mercado did not adequately show how the respondents violated the CPR which would justify an imposition of any disciplinary measure upon them. He readily assumed that herein respondent-lawyers instigated and authored the disbarment case filed against him docketed as CBD Case No. 13-3728 based simply on the legal verbiage used in the complaint and nothing more. As a lawyer, Atty. Mercado should know that filing of baseless complaints is not sanctioned; that in mounting an administrative complaint, the same must be supported by substantial evidence and not by mere surmises or speculations. As an officer of the Court, Atty. Mercado is expected to conduct himself fairly especially in dealing with his fellow lawyers. We thus admonish Atty. Mercado to be more circumspect in his actions and to refrain from filing administrative complaints with absolutely no leg to stand on.

⁵³ *Tan v. Alvarico*, supra note 49, citing *Rico v. Madrazo, Jr.*, A.C. No. 7231, October 1, 2019.

⁵⁴ **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 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.

⁵⁵ *In Re: Pactolin*, 686 Phil. 351, 355 (2012).

WHEREFORE, the Complaint against Attys. Raul Panfilo R. Cariño and Cynthia Sulit-Portugaleza is hereby **DISMISSED** for lack of merit. Atty. Raymund Jorge A. Mercado is **ADMONISHED** to be more circumspect in his actions.

The Letter dated February 17, 2020 of Randall C. Tabayoyong, Director for Bar Discipline, is **NOTED**.

SO ORDERED.”

By authority of the Court:

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1/14/21

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