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[A.C. No. 7594. February 09, 2016]

**ADELPHA E. MALABED, COMPLAINANT, VS. ATTY. MELJOHN B. DE LA PEÑA,
RESPONDENT.**

D E C I S I O N

CARPIO, J.:

The Case

Before the Court is an administrative complaint filed by Adelpha E. Malabed (complainant) against Atty. Meljohn B. De la Peña (respondent) for dishonesty and grave misconduct.

The Facts

In her Complaint^[1] dated 7 August 2007, complainant charged respondent with dishonesty for “deliberately and repeatedly making falsehood” that “misled the Court.” First, complainant claimed that the Certificate to File Action in the complaint filed by respondent refers to a different complaint, that is the complaint filed by complainant’s brother against Fortunato Jadulco. In effect, there was no Certificate to File Action, which is required for the filing of a civil action, in the complaint filed by respondent on behalf of his client Fortunato Jadulco.

Second, complainant alleged that respondent did not furnish her counsel with a copy of the free patent covered by Original Certificate of Title (OCT) No. 1730, but respondent forwarded a copy to the Court of Appeals. Complainant claimed that she could not properly defend herself without a copy of the title. She further claimed that the title presented by respondent was fabricated. To support such claim, complainant presented Certifications from the Department of Environment and Natural Resources (DENR) and the Registry of Deeds in Naval, Biliran, allegedly confirming that there is no file in their offices of OCT No.

1730.

Complainant also alleged that respondent was guilty of conflict of interest when he represented the occupants of the lot owned by complainant's family, who previously donated a parcel of land to the Roman Catholic Church, which deed of donation respondent notarized.

Complainant further accused respondent of conniving with Regional Trial Court (RTC), Naval, Biliran, Branch 16 Judge Enrique C. Asis, who was his former client in an administrative case, to rule in his clients' favor. Complainant narrated the outcomes in the "cases of Estrellers which were filed in the [Municipal Circuit Trial Court (MCTC)] and reversed by the RTC, in the exercise of its appellate jurisdiction to favor respondent x x x and his client[s] x x x."

Complainant charged respondent with grave misconduct when he defied the accessory penalty of his dismissal as a judge. Respondent worked as Associate Dean and Professor of the Naval Institute of Technology (NIT) - University of Eastern Philippines College of Law, which is a government institution, and received salaries therefor, in violation of the accessory penalty of dismissal which is his perpetual disqualification from reemployment in any government office.

In his Comment^[2] dated 16 December 2007, respondent basically denied the charges against him. Respondent alleged that "the [Certificate to File Action] he used when he filed Civil Case No. [B-] 1118 for quieting of title before the Regional Trial Court, Branch 16, Naval, Biliran was the certification of Lupon Chairman, the late Rodulfo Catigbe, issued on May 9, 2001."^[3]

Respondent also claimed that the free patent title was attached to the folio of the records in Civil Case No. B-1118 and he furnished a copy of the same to complainant's counsel. Assuming opposing counsel was not furnished, respondent wondered why he raised this matter only upon filing of the instant complaint.

Respondent argued that notarization of the deed of donation had no relation to the case filed against the occupants of the lot. Respondent likewise stressed that the matter regarding Judge Asis's rulings favorable to his clients should be addressed to Judge Asis himself.

As regards the charge of grave misconduct for defying the accessory penalty of dismissal

from the service, respondent admitted that he accepted the positions of Associate Dean and Professor of the NIT - University of Eastern Philippines College of Law, which is a government institution. However, respondent countered that he was no longer connected with the NIT College of Law; and thus, this issue had become moot. Respondent further claimed that his designation as Assistant Dean was only temporary, and he had not received any salary except honorarium. Respondent stated that he even furnished the Office of the Bar Confidant (OBC) and the MCLE Office a copy of his designation as Associate Dean, and since there were no objections, he proceeded to perform the functions appurtenant thereto. He likewise submitted an affidavit from Edgardo Garcia, complainant in the administrative case against him, who interposed no objection to his petition for judicial clemency filed before this Court.

Complainant filed a Reply-Affidavit^[4] on 22 January 2008. Respondent filed a Rejoinder to Reply^[5] on 20 February 2008. Complainant filed a Surrejoinder to the Rejoinder to Reply^[6] on 20 February 2008. All these submissions basically reiterated the respective arguments of the parties and denied each other's allegations.

The Ruling of the IBP

In his Report and Recommendation,^[7] Integrated Bar of the Philippines (IBP) Commissioner Norberto B. Ruiz noted the foul language used by respondent in his pleadings submitted before the IBP. Respondent described complainant's counsel as "silahis" and accused complainant of "cohabiting with a married man x x x before the wife of that married man died." According to the IBP Commissioner, such offensive language "[is a] clear manifestation[] of respondent's gross misconduct that seriously affect his standing and character as an officer of the court."

With respect to the charges of dishonesty and grave misconduct, the IBP Commissioner found that respondent is guilty of the same "as evidenced by the numerous documents attached by complainant in all the pleadings she has submitted." Respondent committed acts of dishonesty and grave misconduct (1) for using a Certificate to File Action which was used in a complaint filed by complainant's brother Conrado Estreller against Fortunato Jadulco, who is respondent's client; (2) for not furnishing complainant's counsel with a copy of the free patent covered by OCT No. 1730 which was attached to the Comment respondent filed with the Court of Appeals; and (3) for accepting the positions of Associate Dean and Professor of the NIT - University of Eastern Philippines College of Law and receiving

salaries therefor, in violation of the accessory penalty of prohibition on reemployment in any government office as a result of his dismissal as a judge.

The IBP Commissioner recommended that respondent be suspended from the practice of law for one year.^[8]

On 28 October 2011, the IBP Board of Governors issued a Resolution adopting the IBP Commissioner's recommendation. The Resolution reads:

RESOLUTION NO. XX-2011-137

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RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED the Report and Recommendation of the Investigating Commissioner in 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 finding Respondent guilty of dishonesty and grave misconduct, Atty. Meljohn B. De La Peña is hereby SUSPENDED from the practice of law for one (1) year.^[9]

The Issue

The sole issue in this case is whether respondent is guilty of dishonesty and grave misconduct.

The Ruling of the Court

Respondent is guilty of gross misconduct.

Using foul language in pleadings

In his Comment, respondent called complainant's counsel "silahis by nature and complexion"^[10] and accused complainant of "cohabiting with a married man x x x before the wife of that married man died."^[11] In his Rejoinder, respondent maintained that such language is not foul, but a "dissertation of truth designed to debunk complainant's and her counsel's credibility in filing the administrative case."^[12]

We are not convinced. Aside from such language being inappropriate, it is irrelevant to the resolution of this case. While respondent is entitled and very much expected to defend himself with vigor, he must refrain from using improper language in his pleadings. In *Saberon v. Larong*,^[13] we stated:

x x x [W]hile a lawyer is entitled to present his case with vigor and courage, such enthusiasm does not justify the use of offensive and abusive language. Language abounds with countless possibilities for one to be emphatic but respectful, convincing but not derogatory, illuminating but not offensive.

On many occasions, the Court has reminded 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 justice of the cause with which he is charged. In keeping with the dignity of the legal profession, a lawyers language even in his pleadings must be dignified.

For using improper language in his pleadings, respondent violated Rule 8.01 of Canon 8 of the Code of Professional Responsibility which states:

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

Non-submission of certificate to file action

The submission of the certificate to file action, which evidences the non-conciliation between the parties in the barangay, is a pre-condition for the filing of a complaint in court.^[14] Complainant claims that there is no such certificate in the complaint filed by respondent on behalf of Fortunato Jadulco, et al. Instead, what respondent submitted was the certificate to file action in the complaint filed by complainant's brother, Conrado Estreller, against Fortunato Jadulco.^[15]

Respondent counters that what he used "when he filed Civil Case No. [B-] 1118 for Quieting of Title, etc. x x x was the certification x x x issued on May 9, 2001, x x x."

Based on the records, the complaint for quieting of title in Civil Case No. B-1118 was filed with the RTC on 18 October 2000. The Certificate of Endorsement, which respondent

claimed was the certificate to file action he used in Civil Case No. B-1118, was issued on 9 May 2001, or after the filing of the complaint on 18 October 2000. It is apparent that the Certificate of Endorsement did not exist yet when the complaint in Civil Case No. B-1118 was filed. In other words, there is no truth to respondent's allegation that the subject matter of Civil Case No. B-1118 was brought before the Lupon Tagapamayapa and that a certificate to file action was issued prior to the filing of the complaint. Clearly, respondent misrepresented that he filed a certificate to file action when there was none, which act violated Canon 10, Rule 10.01, and Rule 10.02 of the Code of Professional Responsibility, to wit:

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 a paper, x x x.

Failure to furnish opposing counsel with copy of title

With regard to respondent's alleged act of not furnishing complainant's counsel with a copy of the free patent title, we find that it does not constitute dishonesty.

Admittedly, the Court of Appeals was furnished a copy of OCT No. 1730, which means that a copy of the title exists. There is no showing that respondent deliberately did not furnish complainant's counsel with a copy of the title. The remedy of complainant should have been to file with the Court of Appeals a motion to furnish complainant or counsel with a copy of the title so she and her counsel could examine the same.

Moreover, whether OCT No. 1730 is fabricated, as complainant alleges, is a question of fact demanding an examination of the parties' respective evidence. Obviously, this matter falls outside the scope of this administrative case, absent any clear and convincing proof that respondent himself orchestrated such fabrication. The DENR and Registry of Deeds certifications do not prove that respondent manufactured OCT No. 1730. Such documents merely confirm that OCT No. 1730 does not exist in their official records.

Conflict of interest

Complainant accuses respondent of conflict of interest when the latter allegedly notarized a deed of donation of a parcel of land executed by complainant's family in favor of the Roman Catholic Church. Eventually, respondent allegedly sought to litigate as counsel for the opposing parties who are occupants in the lot owned by complainant's family.

Suffice to state that notarization is different from representation. A notary public simply performs the notarial acts authorized by the Rules on Notarial Practice, namely, acknowledgments, oaths and affirmations, jurats, signature witnessings, and copy certifications. Legal representation, on the other hand, refers to the act of assisting a party as counsel in a court action.

As regards complainant's serious accusations against respondent of conniving with Judge Asis and conspiring with the latter to render judgments favorable to respondent's clients, such are bare allegations, without any proof. Complainant simply narrated the outcomes of the proceedings in Civil Case Nos. 1017, 860 and 973, which were filed by the Estrellers in the MCTC and reversed by the RTC. Complainant conveniently failed to present any concrete evidence proving her grave accusation of conspiracy between respondent and Judge Asis. Moreover, charges of bias and partiality on the part of the presiding judge should be filed against the judge, and not against the counsel allegedly favored by the judge.

Violation of prohibition on reemployment in government office

In our 9 February 1994 Resolution,^[16] we dismissed respondent as Acting Judge of Municipal Trial Court of Naval, Leyte and Presiding Judge of the Municipal Circuit Trial Court of Caibiran-Culaba, Leyte for partiality, with prejudice to reappointment to any public office, including government-owned or controlled corporations.

There is no dispute that respondent knows full well the consequences of his dismissal as a judge, one of which is the accessory penalty of perpetual disqualification from reemployment in any government office, including government-owned or controlled corporations. Despite being disqualified, respondent accepted the positions of Associate Dean and Professor of NIT-College of Law, a government institution, and received compensation therefor.

Respondent alleges that his designation was only temporary, and “no fixed salary was attached to his designation except for honorarium.” Respondent also claims that he furnished a copy of his designation to the OBC and MCLE office as a “gesture of x x x respect, courtesy and approval from the Supreme Court.” He further avers that complainant in the administrative case against him (as a judge) posed no objection to his petition for clemency.

Respondent’s contentions are untenable. The prohibition on reemployment does not distinguish between permanent and temporary appointments. Hence, that his designation was only temporary does not absolve him from liability. Further, furnishing a copy of his designation to the OBC and MCLE office does not in any way extinguish his permanent disqualification from reemployment in a government office. Neither does the fact that complainant in his previous administrative case did not object to his petition for clemency.

In view of his disqualification from reemployment in any government office, respondent should have declined from accepting the designation and desisted from performing the functions of such positions.^[17] Clearly, respondent knowingly defied the prohibition on reemployment in a public office imposed upon him by the Court.

In *Santeco v. Avance*,^[18] where respondent lawyer “willfully disobeyed this Court when she continued her law practice despite the five-year suspension order,” the Court held that failure to comply with Court directives constitutes gross misconduct, insubordination or disrespect which merits a lawyer’s suspension or even disbarment.

Gross Misconduct

In sum, respondent committed gross misconduct for (1) misrepresenting that he submitted a certificate to file action issued by the Lupon Tagapamayapa when in fact there was none prior to the institution of the civil action of his client, Fortunato Jadulco, in Civil Case No. B-1118; (2) using improper language in his pleadings; and (3) defying willfully the Court’s prohibition on reemployment in any government office as accessory penalty of his dismissal as a judge. Gross misconduct is defined as “improper or wrong conduct, the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies a wrongful intent and not a mere error in judgment.”^[19]

Under Section 27, Rule 138 of the Rules of Court, gross misconduct is a ground for disbarment or suspension from the practice of law.

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 so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.

In view of respondent's repeated gross misconduct, we increase the IBP's recommended penalty to suspension from the practice of law for two (2) years.

WHEREFORE, we find respondent Atty. Meljohn B. De la Peña **GUILTY** of gross misconduct and accordingly **SUSPEND** him from the practice of law for two (2) years with a **WARNING** that the commission of the same or similar act or acts shall be dealt with more severely.

Let copies of this Decision be furnished the Integrated Bar of the Philippines, the Office of the Bar Confidant, and all courts in the Philippines for their information and guidance.

SO ORDERED.

Sereno, C. J., Velasco, Jr., Leonardo-De Castro, Peralta, Bersamin, Del Castillo, Perez, Mendoza, Reyes, Perlas-Bernabe, Leonen, and Jardeleza, JJ., concur.

Brion, J., on leave.

Caguioa, J., on official leave.

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on February 9, 2016 a Decision/Resolution, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on February 18, 2016 at 9:30 a.m.

Very truly yours,
(SGD)FELIPA G. BORLONGAN-ANAMA
Clerk of Court

^[1] *Rollo*, pp. 2-7.

^[2] *Id.* at 171-184.

^[3] *Id.* at 176.

^[4] *Id.* at 245-248.

^[5] *Id.* at 266-272.

^[6] *Id.* at 283-287.

^[7] *Id.* at 583-591.

^[8] *Id.* at 591.

^[9] *Id.* at 582.

^[10] *Id.* at 174.

^[11] *Id.* at 176.

^[12] *Id.* at 267.

^[13] 574 Phil. 510, 517 (2008). Citations omitted.

^[14] Section 412, Republic Act No. 7160 or the Local Government Code of 1991.

^[15] *Rollo*, p. 22.

^[16] A.M. No. MTJ-92-687, 9 February 1994, 229 SCRA 766.

^[17] See *Lingan v. Calubaquib*, A.C. No. 5377, 30 June 2014 727 SCRA 341.

^[18] 659 Phil. 48 (2011).

^[19] *Sosa v. Mendoza*, A.C. No. 8776, 22 March 2015, citing *Santos, Sr. v. Atty. Beltran*, 463

Phil. 372 (2003), further citing *Spouses Whitson v. Atienza*, 457 Phil. 11 (2003).

Date created: January 18, 2018