ATTY. VICTORIANO S. MURING, JR., COMPLAINANT, VS. ATTY. MANUEL T. GATCHO, COURT ATTORNEY V, NELPA LOTA-CALAYAG, EXECUTIVE ASSISTANT V, AND ATTY. EDNA S. PAÑA, RESPONDENTS.

A.M. NO. CA-05-19-P. August 31, 2006

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CARPIO, J.:

The Case

On 28 February 2003, Atty. Victoriano S. Muring, Jr. ("complainant") filed a Complaint-Affidavit[1] before this Court against respondents Atty. Manuel T. Gatcho ("Atty. Gatcho"), Nelpa Lota-Calayag ("Calayag"), and Atty. Edna S. Paña ("Atty. Paña"), charging that:

- Atty. Gatcho and Calayag, complainant's co-employees at the office of Court of Appeals Justice Bernardo P. Abesamis ("Justice Abesamis," now retired), demanded and received from Atty. Paña P450,000 to facilitate a favorable decision from Court of Appeals Justice Roberto Barrios ("Justice Barrios") in a case then handled by Atty. Paña for her employer.

- Atty. Gatcho and Calayag also demanded P150,000 from Atty. Paña and her employer in exchange for a favorable decision from Supreme Court Justice Jose A. R. Melo ("Justice Melo," now retired).

- Atty. Paña disclosed the receipt of the P450,000 to complainant and to Atty. Ma. Paz Besonaya ("Atty. Besonaya"), a court attorney from the office of Court of Appeals Justice Mariano C. Del Castillo, during a "get-together" at Cafe Breton in Malate, Manila in October 2002.

- On 29 October 2002, while complainant and Calayag were together in the office, Calayag admitted to complainant receipt of the P450,000.

- Soon after, Atty. Paña sent complainant threatening text messages, pressuring him to prevent Atty. Besonaya from informing Justice Barrios about the pay-off. Atty. Gatcho and Calayag also subjected complainant to "verbal abuse" for the same purpose.

- On 5 December 2002, complainant arrived in his office to find Atty. Paña in the visitors' room. Atty. Paña was there to show Justice Abesamis the transcript of stenographic notes (TSN) in an adoption case where complainant appeared as counsel while employed as court attorney.

- Justice Abesamis directed complainant not to divulge to anyone what he had heard about the pay-off story, to refrain from talking to Atty. Besonaya, and to "cooperate" with Atty. Gatcho. On 19 February 2003, two days after complainant reported to Justice Abesamis the "verbal abuse" he received from Atty. Gatcho and Calayag, Justice Abesamis informed complainant that he was to be removed from the office "effective immediately."

- On 19 February 2003, complainant sought an audience with then Acting Presiding Justice of the Court of Appeals (now Supreme Court Associate Justice) Cancio Garcia ("Justice Garcia"). After hearing complainant's story, Justice Garcia "prevailed on him to unearth/expose the pay-off in the highest interest of the court and of the

entire judiciary as an institution."[2]

On 18 March 2003, we resolved to act on the complaint and require respondents to submit their respective Comments.

Calayag filed her Comment on 16 June 2003, wherein she assailed complainant's allegations as hearsay. She claimed that:

> The truth of the matter is that on October 31, 2002, I talked to Atty. Muring and inquired from him whether I have offended him in some way. This is due to the fact that Atty. Muring and Atty. Besonaya have been spreading rumors about me, my children, and my husband (purely personal). Atty. Muring's reply was that it was Atty. Paña who told him about these rumors, after which Atty. Muring apologized. x x x
>
> x x x x
>
> With respect to the allegations x x x regarding the event which transpired on December 5, 2002, the same are likewise contrary to the true events which occurred. On December 5, 2002, the staff of Justice Abesamis requested for a conference, together with Atty. Muring, to discuss matters regarding our respective official functions. The conference was mainly due to the fact that Atty. Muring has been complaining that the staff refused to help him in preparing the synopsis of a certain case.
>
> x x x x
>
> [Atty. Paña] was at the office on that date and time purposely to confront Atty. Muring regarding his claim that the former has been spreading rumors against me.[3]

In his Comment dated 12 June 2003, Atty. Gatcho vehemently denied complainant's accusations. Atty. Gatcho surmised that "[complainant] may have thought that I wanted him terminated," thus:

> I helped [Atty. Paña] obtain a copy of an already promulgated decision from the Reporters' Office, which gesture, I honestly believe, is not violative of any existing rule or regulation governing a government employee.
>
> x x x x
>
> In [complainant's] affidavit, he would not believe that I wanted a confrontation with him x x x. As the [Officer-in-Charge], it was my responsibility to make sure that everything goes well in the x x x x
>
> [Complainant] did not want to talk about his work habit in the office. My only concern that time was how to improve our output in doing research for Justice Abesamis.[4] x x x

In her Affidavit dated 13 May 2003, Atty. Paña denied altogether the statements imputed to her by complainant. Though Atty. Paña acknowledged her closeness with complainant and Atty. Besonaya, she alleged that relations among them gradually turned sour due to frequent bickering between complainant and Atty. Besonaya on the one hand, and Atty. Gatcho and Calayag on the other.[5] Atty. Paña admitted that she sent the "threatening" text messages to complainant, but only because complainant "was creating intrigues among us friends."[6]

Complainant filed his Reply to Comments[7] on 17 July 2003. To contradict Atty. Gatcho and Calayag's insinuations that complainant's poor performance in the office caused his removal, complainant attached a copy of his performance appraisal for the second semester of 2002, wherein he received a "very satisfactory" rating.

Complainant also attached the following affidavits to his Reply:

- Annex "A," the Affidavit of Atty. Donna B. Pascual ("Atty. Pascual) dated 3 July 2003, attesting that (a) "sometime in November 2002, [Atty. Paña] called me several times requesting me to dissuade [Atty. Besonaya]

from reporting to Justice Barrios of the Court of Appeals a pay-off back in the year 2000, that involved her (Atty. Paña), [Calayag], and a certain Nuel (Atty. Gatcho), regarding a case then pending with the office of Justice Barrios'; and (b) "Again, on December 6, 2002, [Atty. Paña] called me. This time, she related to me the circumstances regarding her going to the office of Justice Abesamis in the afternoon of x x x December 5, 2002. [Atty. Paña] told me that she pushed and shoved [complainant] x x x."[8]

- Annex "B," the Affidavit of Atty. Besonaya dated 12 July 2003, attesting to her presence at Cafe Breton that day in October 2002 when Atty. Paña's statements on the alleged pay-off were supposedly made. Atty. Besonaya affirmed complainant's entire story, thus:

> - In the late afternoon/early evening [sometime in October 2002], I obliged to meet [Atty. Paña]. We met at the guardhouse of the main entrance of the Court of Appeals. We then proceeded to the nearby Peking Wok Restaurant along Engracia St., Manila to take our dinner. During the said dinner, nothing much was heard from [Atty. Paña]. x x x
>
> - From Peking Wok Restaurant, [Atty. Paña] and I proceeded to Cafe Breton in Malate, Manila where [complainant would] follow. When [complainant] later arrived, the conversation veered towards [Atty. Gatcho and Calayag] x x x. [Atty. Paña] asked [complainant] how he was getting along with [Atty. Gatcho and Calayag]. I could not recall the exact words x x x but can recall [complainant] having said x x x to the effect that he was getting along with them well so far. Thereafter, [Atty. Paña] blurted out to [complainant], "Basta, mag-ingat ka kay [Calayag at Atty. Gatcho]. Si [Calayag], very manipulative yan. Scheming pa." [Atty. Paña] went on to tell about [Calayag's] x x x bad habits and poor academic performance even way back in college. Both [Atty. Paña] and [Calayag were] classmates and friends even in their pre-law years x x x. Much as I wanted to discourage [Atty. Paña] from character assassinating (sic) [Calayag], but (sic) she was unstoppable.
>
> - To our surprise, [Atty. Paña] blurted out, "Humingi nga sa akin ng P450,000 yang dalawang yan sa kaso dati ni Tanchi kay Barrios!," referring [to Atty. Gatcho and Calayag]. Upon hearing those words, I madly reacted, "Tarantado ka Edna, totoo ba yan?! Sasabihin ko yan kay Barrios. Alam mong close kay Tatay yon! [Atty. Paña] retorted, "Gusto mo tawagan mo pa si Mr. Estrella!"
>
> - [Atty. Paña] further said that [Atty. Gatcho and Calayag] volunteered and claimed to her that they could arrange and/or facilitate a favorable decision from Justice Barrios. That, as she could not handle anymore [Atty. Gatcho and Calayag's] demands as regards the case, she told them to call and speak with Mr. Peter Tanchi, Sr, instead. [Atty. Paña] said that both [Atty. Gatcho and Calayag] ended up calling and speaking with Mr. Estrella and Mr. Tanchi, Sr.
>
> - I felt very upset after [Atty. Paña's] declaration. I could not believe that [Calayag and Atty. Gatcho] were involved in a case fixing and dared to have supposedly fixed a case with a Justice whom I know personally and professionally x x x to be a man of unquestionable integrity and independence. I could not believe that the likes of [Atty. Gatcho and Calayag] would go to the extent of demanding and accepting money from a litigant, at the expense of Justice Barrios's good name and put in disrepute the latter's integrity, that of the Court of Appeals, and the entire judiciary as an institution.
>
> - Still, [Atty. Paña] continued her story. She said that after the P450,000 pay-off, [Atty. Gatcho and Calayag] again demanded P150,000 from her after the Supreme Court issued a Minute Resolution dismissing the petition for review on certiorari in another case she was handling with the same Mr. Tanchi, Sr.'s company. According to Atty. Paña, [Atty. Gatcho and Calayag] represented that [Atty. Gatcho], who allegedly [could] go in and out of the Office of Justice Melo, was responsible for the favorable resolution dismissing the petition. x x x [Atty. Paña] said that after verification later, she discovered that the said case was actually resolved by Justice Panganiban [and] not Justice Melo contrary to the representation of [Atty. Gatcho and Calayag]. Allegedly, Mr. Tanchi, Sr. refused to give in to [Atty. Gatcho and Calayag's] demand for P150,000 but offered to give P10,000 as token instead. According to [Atty. Paña], [Atty. Gatcho] through [Calayag] refused to

> receive the P10,000 token. [Atty. Paña] also said that the P150,000 demand of [Atty. Gatcho and Calayag] primarily caused her falling apart with Mr. Tanchi, Sr. and the rest of her employers, that eventually led to her resignation as the in-house counsel of the Tanchi Group of Companies x x x.[9]
>
> x x x x

Atty. Besonaya further disclosed that Atty. Paña went to her house several days after their meeting at Cafe Breton. There, Atty. Paña made the following revelations:

> That the P450,000 cash demanded by [Atty. Gatcho and Calayag] was delivered [to] the Office of Justice Abesamis, Centennial Building of the Court of Appeals, by Mr. Estrella accompanied by [Atty. Paña], and received thereat by both [Atty. Gatcho and Calayag] one afternoon, sometime prior to the promulgation of the decision x x x.
>
> That the decision in CA-G.R. Sp. No. 49363, entitled Credito Asiatic, Inc., et al. v. DARAB, et al. penned by Justice Barrios was promulgated on March 15, 2000, which case she said was the subject of a Petition for Review on Certiorari pending with the Supreme Court x x x.
>
> That in the afternoon of March 15, 2000, [Atty. Paña] was x x x at the Office of Justice Abesamis, waiting for the advance copy of the decision from the Division Clerk of Court to be furnished by [Atty. Gatcho and Calayag].
>
> That before the close of office hours that same day, [Calayag] handed to her an advance copy of the decision. [Calayag] represented that she was given the advance copy of the decision by the Division Clerk of Court, Atty. Caroline Peralta. x x x
>
> x x x x
>
> That the amount of P10,000 which Mr. Tanchi, Sr. obliged to give to [Atty. Gatcho and Calayag] was delivered to [Calayag] one Sunday in September 2000 just across De La Salle University outside Henry's, Taft Avenue, Manila, during the 2000 Bar Examinations, and contained in a white letter envelope. The amount, however, was refused by [Calayag for] being insufficient and way below the P150,000 demanded.
>
> Respondent [Atty. Paña] also confirmed that she was referring to the same white letter envelope the contents of which she showed me one Sunday afternoon during the September 2000 Bar Examinations, containing P1,000-peso denominations, to be the same envelope that [Calayag] declined to receive earlier that afternoon.
>
> x x x x
>
> That x x x it was not advisable for [Atty. Paña] then to formally speak of the pay-off prior to November 7, 2000, as it [would] prejudice and hamper the ongoing negotiation between her and the Tanchi Group for compromise/settlement, the tentative date of which according to [Atty. Paña] was November 6, 2002. x x x
>
> x x x x
>
> Around 4:27 in the afternoon of [October 28, 2002], I called [Atty. Paña] through her cellular phone x x x.
>
> [Atty. Paña] spoke in a complete turnaround. She told me that she pity (sic) [Calayag] as she has been sick lately x x x. She also said that the pay-off transaction between her, [Atty. Gatcho], and [Calayag] should not be taken as an issue against anyone, after all, she is a practicing lawyer who would sometimes resort to such means to win her case.
>
> My last words to her was, "Oh, you have a sudden change of heart?! Bakit takot ka na kay [Atty. Gatcho] ngayon?" She answered back, "Paz, kasi if it would involve their (Atty. Gatcho and Calayag's) career, they may harm you back." x x x

> From then on, I cut all communications with [Atty. Paña]. x x x[10]

On 26 August 2003, this Court resolved to refer the matter to Justice Edgardo F. Sundiam ("Justice Sundiam") of the Court of Appeals for investigation, report and recommendation.[11]

Findings of the Investigating Justice

Justice Sundiam conducted hearings on the case from 16 October 2003 to 25 May 2004. All of the parties appeared except for Atty. Paña, who was then in the United Kingdom. Atty. Paña submitted a Rejoinder/Comment ("Comment")[12] executed before Consul-General Mario de Leon of the Philippine Embassy in London. In her Comment, Atty. Paña reiterated her defense that "this case is all about intrigues and malicious accusations borne out of extreme anger due to the dismissal from office by [complainant] x x x."[13]

On 19 April 2005, Justice Sundiam submitted his Report and Recommendation ("Report"). Justice Sundiam concluded that the evidence adduced by complainant, as supported by the testimonies of Atty. Pascual and Atty. Besonaya, depicted a more convincing story in contrast to the denials made by Atty. Gatcho and Calayag. On the other hand, Justice Sundiam found Atty. Paña to be a "victim of circumstances" because it appeared that she did not solicit "the help of [Atty.] Gatcho and Calayag and/or offered a bribe to or through them," but it was Atty. Gatcho and Calayag who represented that they could "facilitate the issuance of a favorable decision x x x."[14]

With both Atty. Gatcho and Calayag already resigned from the Court of Appeals, Justice Sundiam recommended that "whatever benefits [they] may be entitled arising from their previous employment x x x be forfeited and that they be forever barred from employment in any government agency."[15] Atty. Paña, however, "may be absolved of any liability or may be admonished."[16]

The Issues

The issues in this case are:

- Whether Atty. Gatcho and Calayag demanded and received P450,000 from Atty. Paña or her employer to facilitate a favorable decision in a case before the office of Court of Appeals Justice Roberto Barrios.

- Whether Atty. Gatcho and Calayag demanded P150,000 from Atty. Paña or her employer, with the representation that they could facilitate a favorable decision in a case before the office of Supreme Court Justice Jose A.R. Melo.[17]

The Court's Ruling

We cannot sustain the findings of the Investigating Justice.

Complaint not supported by substantial evidence

We have repeatedly held that the quantum of proof necessary for a finding of guilt in administrative cases is substantial evidence, i.e., such relevant evidence as a reasonable mind may accept as adequate to support a conclusion.[18] Mere allegation is not evidence and is not equivalent to proof.[19]

A thorough examination of the records shows that complainant's case is founded mainly on statements uttered by Atty. Paña to complainant and to Atty. Besonaya. Complainant and Atty. Besonaya had no personal knowledge of the alleged pay-off. As noted in the Report, complainant himself admitted this lack of personal knowledge:

> Well to note, however, are the following admissions by [complainant] during his cross-examination (TSN, November 10, 2003): that [Atty. Paña] told him about the "pay-off" by merely mentioning "kaso ni Tanchi"; that he was not present when the alleged P450,000 was allegedly given to [Atty. Gatcho] and Calayag; that he

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> was not present during the alleged "pay-off"; that he was not present when [Atty. Gatcho] and Calayag demanded the P150,000 from the employer of [Atty. Paña] anent the case with Justice Melo; that it was the story of [Atty. Paña] that [Atty. Gatcho] and Calayag did not receive the P150,000 because they ("Tanchi"—employer of [Atty. Paña]) "volunteered" only P10,000; that he does not know what happened to the case pending with Justice Melo; that he did not actually see [Atty. Gatcho] and Calayag receive the P450,000 x x x but the fact was admitted to him by [Calayag] and related to him by [Atty. Paña] in the presence of [Atty. Besonaya].
>
> As to whether Justice Barrios rendered a favorable decision in the case of [Atty. Paña's] client, Tanchi, [complainant] would initially testify that he did not know, x x x later on he would state that he is confused and that there was a favorable decision as stated in the Comment of [Atty.] Paña x x x and finally, would state that he had the distinct impression that there was a favorable decision.[20]

Worse, complainant could not even vouch for the integrity of Atty. Paña's information, as he was not certain if Atty. Paña personally dealt with Atty. Gatcho and Calayag in the alleged transactions:

> ATTY. CORDOVA:
>
> You know for a fact that [Atty. Gatcho and Calayag] indeed received the amount of P 150,000 from the employer of Atty. Paña?
>
> COMPLAINANT:
>
> That was the story of [Atty.] Paña. That was the story that they did not receive P 150,000. but they demanded P 150,000 but only the P 10,000 was volunteered by Tanchi.
>
> x x x x
>
> Q:
>
> Was Atty. Paña there when [Calayag] and Atty. Gatcho demanded this P 150,000 from the employer of Atty. Paña?
>
> A:
>
> That was the story of [Atty.] Paña that they demanded P 150,000 for the favorable resolution.
>
> Q:
>
> So you do not know if Atty. Paña was indeed there when these two respondents demanded this P 150,000?
>
> x x x x
>
> A:
>
> That I don't know, Your Honor. [21]

Complainant claims that Atty. Paña threatened him to keep silent about the pay-off, otherwise she would show Justice Abesamis the TSN of the adoption case where complainant appeared as counsel while employed as a court attorney. Complainant submits as evidence several text messages sent from Atty. Paña's cellular phone to his.[22] To our mind, the messages may be proof that complainant and Atty. Paña were in a bitter disagreement, but not necessarily under the circumstances of blackmail described by complainant. This theory of blackmail leaves one wondering why Atty. Paña eventually decided to give Justice Abesamis a copy of the TSN, when by such act, Atty. Paña instead gave complainant a reason to retaliate, thus:

> JUSTICE SUNDIAM:

> Now, since [you had] not yet told Justice Abesamis about the pay- off' why did she, Atty. Paña, give the TSN ahead to Justice Abesamis?
>
> x x x x
>
> COMPLAINANT:
>
> I cannot speak for Atty. Paña. But all I can say is that, [Atty.] Paña took it against me. x x x that there was failure on my part to dissuade Atty. Besonaya. But as to her other motive in giving the TSN to Justice Abesamis, I cannot speak for her. [23]

It further appears that complainant himself was not convinced of the solidness of his case. Asked during cross-examination if he entertained the thought of informing the concerned incumbent justices of the pay-off, complainant's answers revealed his own uncertainty:

> JUSTICE SUNDIAM:
>
> So, in short, it never occurred to you to see these two Justices. Please answer the question?
>
> COMPLAINANT:
>
> Actually Your Honor, I was afraid to do such an action.
>
> Q:
>
> You were afraid to do it?
>
> A:
>
> Yes, Your Honor.
>
> ATTY. PEREZ:
>
> Why were you afraid to do it?
>
> A:
>
> You know I might even be (pause) Justice Barrios, for one, may ask me, who is my source or what is my source. So, it would be hard on my part to start up a controversy without proof.
>
> Q:
>
> What proof do you have now if you didn't have any proof Mr. Witness, what proof do you have now to start a whole, big, controversy?
>
> A:
>
> We are just starting so, I think in the process, I think there will be pieces of evidence to be presented that I hope would prove the allegations of my complaint.
>
> Q:
>
> So you are not yet through with your data gathering, yes or no?
>
> A:
>
> What do you mean by data gathering?
>
> Q:

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With your gathering of pieces of evidence?

A:

I will be presenting witnesses on my behalf. x x x [24]

Thus, upon learning of his termination, complainant "decided to seek an audience" with Justice Garcia, but only so that Justice Garcia could "somehow intervene on [his] behalf that instead [he] would be allowed to resign instead of being terminated x x x." Complainant feared the forfeiture of "the monetary value of [his] leave credits" if terminated for cause.[25]

Finally, complainant failed to adduce evidence that Atty. Gatcho obtained a copy of the decision in CA-G.R. SP No. 49363, on the day of its promulgation, for an unlawful reason.

Testimony of Atty. Pascual and Atty. Besonayafail to bolster complainant's allegations

The affidavit of Atty. Pascual states that Atty. Paña sought her help to dissuade Atty. Besonaya from reporting the pay-off to Justice Barrios. Contrary to the contents of her affidavit, Atty. Pascual testified on cross-examination that Atty. Paña made no further requests from her other than to mend a rift between her and Atty. Besonaya:[26]

ATTY. PEREZ:

And how upset was Atty. Besonaya?

[ATTY.] PASCUAL:

I have no idea, Sir, because it was only relayed to me by Atty. Pa?a when she was asking me to patch up her friendship with Atty. Besonaya.

x x x x

Q:

And what did Atty. Paña tell you?

A:

She mentioned about [Atty. Besonaya] getting upset about alleged "pay-off" with Justice Barrios. She also mentioned the names of Malou and Noel which, that name Noel, I did not even know. So, I simply did not pay attention to that because it's a – (pause) all the while I thought it was a simple quarrel among friends.

Q: So, at first you didn't believe. "Yes" or "No"?

A: If I did not believe the story?

Q: What [Atty. Paña] told you?

A: From the level of voice of Atty. Paña, I could sense that there was really a rift between her and Atty. Besonaya, but regarding "pay- off," I did not bother myself with that "pay-off." [27]

Q: Madam Witness, you stated a while ago that Atty. Paña called you only for the purpose of asking your help in patching up her differences with Atty. Besonaya, is that correct?

A: Are you referring to that particular day?

ATTY. PEREZ:

Yes.

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[ATTY.] PASCUAL:

Yes, sir.

Q: Now, in your affidavit, paragraph 4 "While I called [Atty. Besonaya] and informed her about [Atty. Paña's] request, I made no effort to dissuade her." What do you mean by this?

A: I made no effort to dissuade her?

ATTY. PEREZ:

Yes.

A: I made no effort to talk to [Atty. Besonaya] regarding-(pause) dissuading her from exposing about that "pay-off."

Q: Why, Madam Witness, was there a request for you to dissuade Atty. Besonaya from reporting the alleged "pay-off"?

A: Request from whom, Sir.

Q: From Atty. Paña or whoever?

A: She did not ask me to dissuade [Atty. Besonaya]. [28]

While admitting that she had no personal knowledge of the pay-off, Atty. Besonaya insists that she witnessed Atty. Paña hand over the envelope containing P10,000 to Calayag, which envelope Calayag refused to receive.[29] However, she did not hear the conversation between Atty. Paña and Calayag[30] and only learned about the matter of the envelope when Atty. Paña visited her house sometime in October 2000. Again, we find that Atty. Paña's statements serve as the sole basis for Atty. Besonaya's allegations:

ATTY. PEREZ:

Now in Paragraph 11.7 of your statement, the second Paragraph of 11.7 you stated that "respondent [Atty. Paña] also confirmed that she was referring to the same white envelope the contents of which she showed me one Sunday afternoon during the September 2000 Bar Examinations, containing P 1,000-peso denominations, to be the same," can you tell this Court how [Atty.] Paña showed you that envelope?

BESONAYA:

Because after that Bar Operations around mga past 5 o'clock [Calayag] declined to receive earlier the envelope that afternoon we proceeded to Tapa King Restaurant along Estrada corner Taft Avenue, I was waiting for a friend there and I think that time she was waiting for her brother and she joked about it, I can recall she said that "ayaw nila ikain na lang natin." And showing to me the white envelope, Sir, with the money.

x x x x

Q:

Now when Atty. Paña showed you the white envelope as you stated, did Atty. Paña tell you anything else aside

> from that?
>
> A:
>
> No Sir, she only confirmed it during our second meeting in our house already, last October already.
>
> Q:
>
> What did she confirm during that second meeting?
>
> A:
>
> That the money actually was the P 10,000, the P 10,000 was refused to be receive (sic) by [Calayag] then, Sir, on September 2000. [31]

Atty. Besonaya's narration of the events does not prove that the money in the envelope was tendered to Calayag pursuant to a pay-off arrangement. Neither does it prove that Calayag refused to accept the envelope because, as relayed by Atty. Paña to Atty. Besonaya, the amount contained therein was not acceptable to Calayag.

Atty. Paña is administratively liable

The accusations against Atty. Gatcho and Calayag regarding a pay-off may not have been fully substantiated, but it is clear to the Court that Atty. Paña's reckless statements and actions about an alleged "pay-off" in the judiciary sparked this entire controversy. Complainant, Atty. Pascual, and Atty. Besonaya all pointed to Atty. Paña as their source of information on the alleged "pay-off." It would be difficult to ascribe to them any evil motive in accusing Atty. Paña, as she herself admitted their close relationship based on long-term friendships. The respective testimonies of complainant and Atty. Besonaya regarding the events that transpired in Cafe Breton correspond perfectly. In the face of these evidence, Atty. Paña's claim that complainant was merely "creating intrigues" among the parties rings hollow.

If lawyers commit a misconduct that would put their moral character in serious doubt, then the court is justified in suspending or removing them from the office of attorney.[32] The evidence in this case shows failure on the part of Atty. Paña to comply with the exacting standards of good moral character required of members of the Bar. Atty. Paña's reckless statements on alleged schemes of corruption serve only to tarnish the image of the legal profession and of public office.

Atty. Gatcho filed petitions for commissionas notary public while employed as court attorney

In the course of the hearings, complainant presented copies of petitions filed by Atty. Gatcho for commission as notary public in the cities of Mandaluyong and Makati, dated 3 April 2000 and 7 February 2003, respectively. Atty. Gatcho asserts that he filed the petitions only because he was "planning to engage in private practice" upon separation from government service.[33] These petitions do not form part of the records.

Memorandum Circular No. 17 of the Executive Department permits employees of government offices to "engage directly in any private business, vocation or profession x x x outside office hours."[34] However, we declared in an En Banc resolution dated 1 October 1987 that —

> x x x [the memorandum circular] x x x [is] not applicable to officials or employees of the courts considering the express prohibition in the Rules of Court and the nature of their work which requires them to serve with the highest degree of efficiency and responsibility, in order to maintain public confidence in the Judiciary.[35]

Atty. Gatcho should have known that as a government lawyer, he was prohibited from engaging in notarial

practice, or in any form of private legal practice for that matter. Atty. Gatcho cannot now feign ignorance or good faith, as he did not seek to exculpate himself by providing an explanation for his error. Atty. Gatcho's filing of the petition for commission, while not an actual engagement in the practice of law, appears as a furtive attempt to evade the prohibition.

Complainant engaged in unauthorized private practice

While complainant must have intended to assume the role of whistle-blower in filing this case, we cannot disregard complainant's admission that he appeared in court as counsel and received P2,000 in appearance fees when he was employed as court attorney.[36] Appearing in court on behalf of a party litigant falls within the scope of the phrase "practice of law." We held in Cayetano v. Monsod that —

> To engage in the practice of law is to perform those acts which are characteristic of the profession. Generally, to practice law is to give notice or render any kind of service, which device or service requires the use in any degree of legal knowledge or skill.[37]

Under the Uniform Rules on Administrative Cases in the Civil Service, engaging in the private practice of profession, when unauthorized, is classified as a light offense punishable by reprimand.[38]

Resignation or removal not a barto a finding of administrative liability

The fact that complainant and Atty. Gatcho are no longer employed at the Court of Appeals, and claim to have shifted to private practice, does not preclude the Court from making a pronouncement as to their administrative liability for acts committed by them while in government service. Cessation from office of a respondent by resignation or retirement does not warrant the dismissal of an administrative complaint filed while he or she was still in the service nor does it render the administrative case moot and academic.[39] The complaint in this case was filed on 28 February 2003, before Atty. Gatcho resigned. The jurisdiction that the Court acquired at the time of the filing of the complaint is retained until the case is finally resolved. However, while they deserve a more severe penalty, like suspension from office, they can only now be admonished since they are no longer in the service.

WHEREFORE, we find Atty. Edna S. Paña guilty of gross misconduct and accordingly SUSPEND her from the practice of law for three (3) months effective upon finality of this Decision. For engaging in the unauthorized private practice of law, we ADMONISH Atty. Victoriano S. Muring, Jr., Court Attorney IV. For filing a petition for commission as notary public while employed in the Judiciary, we also ADMONISH Atty. Manuel T. Gatcho, Court Attorney V. They are STERNLY WARNED that repetition of the same or similar act in the future shall merit a more severe sanction.

We DISMISS the administrative complaint against Nelpa Lota-Calayag, Executive Assistant V, for lack of merit.

Let copies of this Decision be furnished the Office of the Bar Confidant, to be appended to the personal records of Paña, Muring, and Gatcho, as attorneys; the Integrated Bar of the Philippines; and the Court Administrator for circulation to all courts of the country.
SO ORDERED.

Panganiban, C.J., Puno, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Austria-Martinez, Carpio Morales, Callejo, Sr., Azcuna, Tinga, Chico-Nazario and Garcia, JJ., concur.Corona, J., on leave.Velasco, Jr., J., no part due to prior action in OCA.

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[1] Rollo, pp. 2-16.

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[2] Id. at 232-234.

[3] Id. at 50-51.

[4] Id. at 67-69.

[5] Id. at 54-55.

[6] Id. at 56.

[7] Id. at 83-98.

[8] Id. at 90-91.

[9] Id. at 101-110.

[10] Id. at 104-107.

[11] Id. at 203.

[12] Id. at 189-198.

[13] Id. at 189.

[14] Report, p. 20.

[15] Id. at 21.

[16] Id.

[17] Id. at 3-4.

[18] Navarro v. Cerezo, A.M. No. P-05-1962, 17 February 2005, 451 SCRA 626, 629.

[19] Id.

[20] Report, pp. 6-7.

[21] TSN, 10 November 2003, pp. 44-46.

[22] Rollo, pp. 6-7.

[23] TSN, 13 November 2003, pp. 29-32.

[24] TSN, 10 November 2003, pp. 121-122.

[25] TSN, 13 November 2003, p. 59.

[26] TSN, 19 November 2003, pp. 74-75.

[27] Id. at 75-76, 78-79.

[28] Id. at 81.

[29] TSN, 5 December 2003, p. 81.

[30] Id. at 96.

[31] Id. at 73-74.

[32] In re Sotto, 38 Phil. 532 (1918).

[33] TSN, 12 May 2004, pp. 29-30.

[34] Memorandum Circular No. 17 dated 4 September 1986 issued by the Executive Department pursuant to Section 12, Rule XVIII of the Revised Civil Service Rules.

[35] Administrative Circular No. 5 issued by Chief Justice Marcelo B. Fernan on 4 October 1988. Supreme Court Circulars, Part I, p. 117.

[36] TSN, 10 November 2003, pp. 64-69.

[37] G.R. No. 100113, 03 September 1991, 201 SCRA 210, 214.

[38] Section 52, Rule IV. Resolution No. 991936 of the Civil Service Commission, effective 26 September 1999.

[39] Baquerfo v. Sanchez, A.M. No. P-05-1974, 6 April 2005, 455 SCRA 13.

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