

BIENVENIDO T. CANLAPAN, COMPLAINANT, VS. ATTY. WILLIAM B. BALAYO, RESPONDENT.

A.C. No. 10605. February 17, 2016

Ponente: LEONEN, J.

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LEONEN, J.:

Before this court is a verified Complaint[1] filed by Bienvenido T. Canlapan, a retired Scout Executive[2] of the Boy Scout of the Philippines - Mayon Albay Council, against Atty. William B. Balayo for violation of Canon 1, Rules 1.01 and 1.03, and Canon 12, Rule 12.04 of the Code of Professional Responsibility:

Rule 1.01. - A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

....

Rule 1.03 - A lawyer shall not, for any corrupt motive or interest, encourage any suit or proceeding or delay any man's cause.

....

Rule 12.04 - A lawyer shall not unduly delay a case, impede the execution of a judgment or misuse court processes.

Complainant avers that at the mandatory conference held on June 26, 2014 at 10 a.m., before Executive Labor Arbiter Jose C. Del Valle, Jr., in connection with a money claim filed by complainant against the Boy Scouts of the Philippines - Mayon Albay Council[3] (Mayon Council), respondent arrogantly threw his arm toward the complainant while menacingly saying: "Maski sampulo pang abogado darhon mo, dai mo makua ang gusto mo!" ("Even if you bring ten lawyers here, you will not get what you want!")[4]

Respondent allegedly made this remark when complainant approached the Mayon Council representatives and told them that complainant, not having been informed beforehand that Ervin O. Fajut (Fajut), Chair of the Mayon Council would bring a lawyer, was placed at a disadvantaged position because he had none.[5]

Complainant was allegedly taken aback and felt humiliated by respondent's actuation, which showed a blatant disrespect for the elderly considering that respondent was much younger.[6] The incident was witnessed by Higinio M. Mata (Mata), First Vice Chair of the Mayon Council, who executed an Affidavit,[7] and employees of the National Labor Relations Commission, including the security guard.[8]

Complainant further avers that he expected the conference to be brief as it was called merely for him to confirm[9] the parties' amicable settlement as evidenced by the June 7, 2014 Memorandum Agreement,[10] where the Mayon Council agreed to pay complainant his accrued leave benefits in the total amount of P487,000.00 on an installment basis. However, it became adversarial when Fajut reneged on the agreement allegedly due to respondent's influence.[11]

Complainant faults respondent for impeding the enforcement of the signed compromise agreement dated June 7,

2014.[12] This was allegedly in violation of a lawyer's duty to assist in the speedy and efficient administration of justice.[13]

Complainant never imagined that, in his twilight years and in his quest for justice, he would be publicly humiliated by a young lawyer actively participating in the conference, who was neither a party to the labor case nor was authorized by the Mayon Council to appear on its behalf.[14]

In his Comment[15] dated December 1, 2014, respondent avers that he has assisted Fajut in several cases. In addition, Fajut also consulted respondent on the legality of ordinances and resolutions submitted to his office as a member of the Sangguniang Bayan of Malinao, Albay. When Fajut was elected Chair of the Mayon Council, he asked respondent to help him on legal matters concerning his new role.[16]

Upon Fajut's invitation, respondent attended the Executive Meeting of the Mayon Council on June 7, 2014.[17] In that meeting, respondent saw how the Executive Committee was cajoled by Mata, First Vice Chair of the Mayon Council, into agreeing to the Memorandum of Agreement without discussing its legality. The Agreement was presented to the Executive Committee prepared and signed by complainant and by Jose Bonto, former acting Chairperson of the Mayon Council.[18]

Respondent avers that after the Executive Meeting, a former employee of the Mayon Council informed Fajut that the Agreement was illegal because its assertion that complainant never availed himself of sick leaves for 39 years was not true.[19]

Thus, on June 10, 2014, Fajut allegedly consulted respondent at his office on the legality of the Memorandum of Agreement dated June 7, 2014. Respondent, being himself a boy scout once, volunteered to render free legal assistance to Fajut.[20] After interviewing Fajut and examining the documents he brought, respondent rendered his written legal opinion[21] dated June 10, 2014.

Respondent further avers that on June 26, 2014, respondent happened to be at the Labor Arbiter's Office to attend to three cases. While there, Fajut approached and asked respondent to make a special appearance for him as it appeared that the Memorandum of Agreement was notarized by Notary Public Enrico Voltaire Rivera despite Fajut's refusal to appear before the notary public. Fajut also said that he had been actively seeking the cancellation of the Agreement.[22]

Respondent avers that the Acknowledgement portion[23] of the Memorandum of Agreement showed that only complainant and the witnesses appeared before the notary public and acknowledged their signatures on the Agreement. There was no mention of Fajut, who was the signatory on behalf of the May on Council. Thus, to prevent the perpetration of any fraud against the Mayon Council and/or Fajut, respondent agreed to make a special appearance for the limited purpose of protesting the defective notarization of the Memorandum of Agreement.[24]

During the hearing, complainant allegedly became visibly angry and raised his voice against respondent because of the legal opinion that he wrote. Respondent had no choice but to defend his legal opinion. Nonetheless, he raised as an issue the fact of the improper notarization of the Memorandum of Agreement.[25]

At that point, allegedly to diffuse the tension, the Labor Arbiter asked to talk to the parties individually. While outside the room, complainant pestered respondent and repeatedly exclaimed that it was unfair for Fajut to bring a lawyer while complainant had none.[26]

Respondent avers that he replied in a matter-of-fact tone: "Maski pira pang abogado ang darahon mo, pareho man sana ang resulta kaiyan" ("You can bring as many lawyers as you want, the result will be the same").[27]

Respondent further states that he did not flail his hands nor do anything threatening, menacing, defamatory, or

disrespectful towards complainant. He did not even raise his voice. Respondent was not arrogant in his dealings with complainant. He only answered back because he was unduly provoked by complainant's persistent and uncalled-for statements against him and his client, Fajut.[28]

Furthermore, to respondent's mind, whether complainant had a lawyer or not, the results would be the same: the Memorandum of Agreement would not be approved by the Labor Arbiter because of the defective notarization. Indeed, the Labor Arbiter required the parties to submit their position papers.[29]

On June 30, 2014, Fajut allegedly requested respondent to attend the Executive Committee meeting of the May on Council and to explain the legal opinion that he wrote. During the meeting, respondent allegedly answered questions from the members of the Executive Committee.[30]

Respondent avers that in all of these instances, he waived his fees as he wanted to donate his services to the Boy Scouts. Furthermore, he acted only upon the request of Fajut, and not because of any corrupt motive or interest.[31]

Attached to the Comment is the Supporting Affidavit[32] executed by Fajut on December 1, 2014, corroborating respondent's allegations.

We find respondent guilty of conduct unbecoming of a lawyer and officer of the court for his disrespectful utterances against an elderly. However, we dismiss the other charges imputed against him for lack of merit.

I

Complainant alleges that respondent's act of publicly berating and throwing his arm toward him, a senior citizen, while menacingly saying, "Maski sampulo pang abogado darahon mo, dai mo makua ang gusto mo!"[33] is indicative of immoral conduct, disrespect for elders, and a total loss of moral fiber of the person.

Respondent denies that he flailed his hands or did anything menacing, antagonistic, or disrespectful towards complainant. However, he admits that he uttered in a matter-of-fact tone, "Maski pira pang abogado ang darahon mo, pareho man sana ang resulta kayan,"[34] because of complainant's uncalled-for statements against him and Fajut. This was corroborated by Fajut in his Affidavit.

The manner in which the remark was made is inconclusive in view of the conflicting testimonies of the witnesses. Nonetheless, we find rude and disrespectful the utterances made by respondent against complainant, who was already 70 years old at that time. The tenor of the message cannot be taken lightly. It was meant to annoy and humiliate complainant. Not only was it ill-mannered; it was also unbecoming of a lawyer, considering that he did it to an elderly and in front of co-litigants and National Labor Relations Commission employees.

Elderly people have, in our society, occupied a revered stature. We teach our children to treat elders with utmost respect. A special week is dedicated to the elderly every year to give them recognition and honor in order to raise the people's level of awareness of the important role senior citizens play in society.[35]

Under the 1987 Constitution, it is the duty of the family and the state to care for its elderly members.[36] Pursuant to this provision and the constitutional principles on social justice[37] and priority of the elderly to an integrated and comprehensive health delivery system,[38] Republic Act No. 7432,[39] otherwise known as the Senior Citizens Act, was passed into law on April 23, 1992. Republic Act No. 7432, as amended by Republic Act No. 9257,[40] grants certain privileges and benefits to senior citizens in accordance with the following declared policies:

(a)

To motivate and encourage the senior citizens to contribute to nation building;

(b)

To encourage their families and the communities they live with to reaffirm the valued Filipino tradition of caring for the senior citizens;

(c)

To give full support to the improvement of the total well-being of the elderly and their full participation in society considering that senior citizens are integral part of Philippine society;

(d)

To recognize the rights of senior citizens to take their proper place in society. This must be the concern of the family, community, and government;

(e)

To provide a comprehensive health care and rehabilitation system for disabled senior citizens to foster their capacity to attain a more meaningful and productive ageing; and

(f)

To recognize the important role of the private sector in the improvement of the welfare of senior citizens and to actively seek their partnership.

Republic Act No. 9994, otherwise known as the Expanded Senior Citizen Act of 2010, further amended the policies and objectives, as follows:

(a)

To recognize the rights of senior citizens to take their proper place in society and make it a concern of the family, community, and government;

(b)

To give full support to the improvement of the total well-being of the elderly and their full participation in society, considering that senior citizens are integral part of Philippine society;

(c)

To motivate and encourage the senior citizens to contribute to nation building;

(d)

To encourage their families and the communities they live with to reaffirm the valued Filipino tradition of caring for the senior citizens;

(e)

To provide a comprehensive health care and rehabilitation system for disabled senior citizens to foster their capacity to attain a more meaningful and productive ageing; and

(f)

To recognize the important role of the private sector in the improvement of the welfare of senior citizens and to actively seek their partnership.

As servants of the law, lawyers must be model citizens and set the example of obedience to law. The practice of law is a privilege bestowed on lawyers who meet high standards of legal proficiency and morality.[41] Canon 1 of the Code of Professional Responsibility expresses the lawyer's fundamental duty to "uphold the Constitution, obey the laws of the land[,] and promote respect for law[.]" Respondent's display of improper attitude and arrogance toward an elderly constitute conduct unbecoming of a member of the legal profession and cannot be tolerated by this court.

Respondent also violated Canon 7 of the Code of Professional Responsibility, which enjoins lawyers to uphold the dignity and integrity of the legal profession at all times. Rule 7.03 provides:

Rule 7.03 — A lawyer shall not engage in conduct that adversely reflect on his fitness to practice law, nor shall he, whether in public or private life behave in scandalous manner to the discredit of the legal profession.

Furthermore, Rule 8.01 of Canon 8 requires a lawyer to employ respectful and restrained language in keeping with the dignity of the legal profession.[42] Although the remark was allegedly made in response to undue provocation and pestering on the part of complainant, respondent should have exercised restraint. Notwithstanding his personal opinion on the merits of complainant's claims (in light of the defective notarization in the Memorandum of Agreement dated June 7, 2014), it was improper for respondent to state that even if complainant brought 10 (or as many) lawyers as he wanted, he would not prosper in his claims against the Mayon Council. Careless remarks such as this tend to create and promote distrust in the administration of justice, undermine the people's confidence in the legal profession, and erode public respect for it. "Things done cannot be undone and words uttered cannot be taken back." [43]

111 feelings between litigants may exist, but they should not be allowed to influence counsels in their conduct and demeanor towards each other or towards suitors in the case. As officers of the court and members of the bar, lawyers are expected to be always above reproach.[44] They cannot indulge in offensive personalities. They should always be temperate, patient, and courteous both in speech and conduct, not only towards the court but also towards adverse parties and witnesses.[45]

In *Santiago v. Oca*: [46]

The Court may suspend or disbar a lawyer for "any misconduct showing any fault or deficiency in his moral character, honesty, probity or good demeanor," whether in his professional or private life because "good character is an essential qualification for the admission to the practice of law and for the continuance of such privilege."

Thus, it has been ruled:

To note, "the possession of good moral character is both a condition precedent and a continuing requirement to warrant admission to the Bar and to retain membership in the legal profession." This proceeds from the lawyer's duty to observe the highest degree of morality in order to safeguard the Bar's integrity. Consequently, any errant behavior on the part of a lawyer, be it in the lawyer's public or private activities, which tends to show deficiency in moral character, honesty, probity or good demeanor, is sufficient to warrant suspension or disbarment.[47]

In *Sangalang v. Intermediate Appellate Court*, [48] the respondent was suspended for three (3) months for his insulting language in his motion for reconsideration amounting to disrespect toward this court. In *Torres v. Javier*, [49] the respondent was suspended for one (1) month for employing offensive and improper language in his pleadings.

In this case, we find suspension from the practice of law for one (1) month a reasonable sanction for respondent's misconduct.

II

With respect to the other charges against respondent, we find them to have not been adequately proven.

Complainant avers that it was immoral and gross misconduct on the part of respondent, who was not a party to the case, to prevent the due implementation of the Memorandum of Agreement dated June 7, 2014. Complainant further points to the following statements of respondent as shown in the Minutes of the Executive Committee Meeting dated June 30, 2014.[50]

Mr. Balayo, the counsel, averred that while the case may not be brought before the Ombudsman, a case may arise, before any court, criminally, to which his client claims protection from and further averred that the Council may be held liable, more those who voted in favor of the agreement.

....

Mr. Balayo again stressed the situation of "doing things right" and "doing the right thing." That while the board wanted to do what is right, Mr. Canlapan however, was not able to bring his claim timely, and therefore; his right to do so is already forfeited and waived under the Labor Code.[51]

Complainant argues that the foregoing actuations of respondent violate Canon 12, Rule 12.04, which demands that lawyers should not "unduly delay a case, impede the execution of judgment or misuse court processes." He adds that respondent should have encouraged the peaceful resolution of the labor case considering that the parties had already signed the compromise agreement.

We find nothing improper in the actions and statements of respondent. What respondent did was a mere honest effort to protect the interest of his client, the Chair of the Boy Scouts of the Philippines - Mayon Albay Council. The Boy Scouts of the Philippines is a public corporation or government instrumentality; hence, the money to be paid to complainant is public money and subject to audit by the Commission on Audit.[52] Hence, if the Memorandum of Agreement causes any undue injury to any party, including the government, the parties to the Agreement can be brought to court on administrative and/or criminal charges.

It was Fajut who went to respondent's office to seek legal advice after he was informed by a former Mayon Council employee that the Agreement was invalid. Respondent rendered his legal opinion dated June 10, 2014 in response to a query posed by Fajut pertaining to the legality of the payment of accrued sick leave benefits to complainant. In his opinion, respondent advised Fajut to retrieve the Compromise Agreement that he improvidently signed, to cause its cancellation, or to move for its disapproval before the Labor Arbiter on the following grounds: (1) complainant failed to present evidence (such as his Daily Time Record) to prove his factual claim that he never utilized his sick leave and vacation leave for 39 years; and (2) even assuming that complainant's claim that he never availed himself of sick leaves was factually true, there was no basis to approve a claim that goes back 39 years.

Respondent further explained that the Boy Scout of the Philippines Employees Manual showed that commutation of unused sick leaves must be done at the end of each year. Necessarily, the claim of commutation to cash of unused sick leaves for years 1975 to 2010 was already barred by Article 291[53] of the Labor Code. Respondent advised that at most, complainant could only claim benefits for a period of three (3) years.

Respondent appeared in the proceedings before the Labor Arbiter on behalf of Fajut and only for the very limited purpose of pointing out to the Labor Arbiter the defect in the notarization of the Memorandum of Agreement. It was Fajut who approached respondent and asked him to make a special appearance on his behalf for the sole reason that complainant chose to present to the Labor Arbiter a defectively notarized Agreement, one which a signatory thereof actively tried to have cancelled in view of his doubts as to its validity.

Moreover, respondent's participation and statements in the June 30, 2014 Executive Committee meeting cannot be characterized as malicious and unprofessional. The issue of the criminal liability of those who voted in favor of the Agreement arose because of the threats of criminal cases to be filed by a certain Mr. Redillas and a certain Mr. Navarra, both former officers of the Mayon Council.[54] It is clear that respondent was merely expressing his legal opinion and not advocating any course of action.

We hold that the foregoing acts do not amount to obstruction of the administration of justice. It is the right of every lawyer, without fear or favor, to give proper advice to those seeking relief. Respondent's assertiveness in espousing with candor his client's cause was: merely in accord with his duty to act in the best interests of his client.[55]

WHEREFORE, this court finds Atty. William B. Balayo guilty of conduct unbecoming of a lawyer and violating Canon 1, Canon 7, Rule 7.03, and Canon 8, Rule 8.01 of the Code of Professional Responsibility. He is hereby **SUSPENDED** from the practice of law for one (1) month, and **WARNED** that commission of the same or similar acts in the future will be dealt with more severely.

SO ORDERED.

Carpio, (Chairperson), Del Castillo, and Mendoza, JJ., concur.
Brion, J., on leave.

April 12, 2016

NOTICE OF JUDGMENT

Sir/Madam:

Please take notice that on February 17, 2016 a 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 April 12, 2016 at 3:00 p.m.

Very truly yours,

MA. LOURDES C. PERFECTO
Division Clerk of Court

By:

(SGD)TERESITA AQUINO TUAZON
Deputy Division Clerk of Court

[1] Rollo, pp. 1-13.

[2] Id. at 2-3. Complainant retired at the age of 70 on November 1, 2013, after serving for 39 years.

[3] Id. at 2.

[4] Id. at 4.

[5] Id.

[6] Id.

[7] Id. at 17-18.

[8] Id. at 4.

[9] Id. at 14, Order dated June 16, 2014. The Order was issued by Executive Labor Arbiter Jose C. Del Valle, Jr.

[10] Id. at 15-16.

[11] Id. at 3.

[12] Id. at 8.

[13] Id. at 10.

[14] Id. at 8.

[15] Id. at 31-43.

[16] Id. at 32.

[17] Id. at 33.

[18] Id.

[19] Id.

[20] Id.

[21] Id. at 48-50.

[22] Id. at 34.

[23] Id. at 16.

[24] Id. at 34-35.

[25] Id. at 35.

[26] Id.

[27] Id.

[28] Id. at 35-36.

[29] Id. at 36.

[30] Id. at 37.

[31] Id.

[32] Id. at 44-47.

[33] Id. at 6.

[34] Id. at 35.

[35] Proc. No. 757 (1996).

[36] CONST., art. XV, sec. 4 provides:

SECTION 4. The family has the duty to care for its elderly members but the State may also do so through just

programs of social security.

[37] CONST., art. II, sec. 10 provides:

SECTION 10. The State shall provide social justice in all phases of national development.

[38] CONST., art. XIII, sec. 11 provides:

SECTION 11. The State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost. There shall be priority for the needs of the underprivileged, sick, elderly, disabled, women and children.

[39] An Act to Maximize the Contribution of Senior Citizens to Nation Building, Grant Benefits and Special Privileges and For Other Purposes (1992).

[40] Rep. Act No. 9257 is otherwise known as the Expanded Senior Citizens Act of 2003 (2004).

[41] Noble III v. Ailes, A.C. No. 10628 (Resolution), July 1, 2015

<<http://sc.judiciary.gov.ph/pdfweb/viewer.html?file=/jurisprudence/2015/july2015/10628.pdf>> [Per J. Perlas-Bernabe, First Division].

[42] See Lubiano v. Gordolla, 201 Phil. 47 (1982) [Per J. Escolin, Second Division].

[43] Dallong-Galicinao v. Castro, 510 Phil. 478, 486 (2005) [Per J. Tinga, Second Division].

[44] Sanchez v. Somoso, 459 Phil. 209 (2003) [Per J. Vitug, First Division].

[45] Macias v. Malig, 241 Phil. 455 (1988) [Per J. Feliciano, Third Division].

[46] A.C. No. 10463 (Notice), July 1, 2015
<<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/resolutions/2015/07/10463.pdf>> [Second Division].

[47] Id. at 3, citing Spouses Donato v. Asuncion, Sr., 468 Phil. 329, 335 (2004) [Per J. Sandoval-Gutierrez, Third Division]; Chu v. Guico, A.C. No. 10573, January 13, 2015
<<http://sc.judiciary.gov.ph/jurisprudence/2015/january2015/10573.pdf>> 6 [Per Curiam, En Banc]; and Abella v. Barrios, Jr., A.C. No. 7332, June 18, 2013, 698 SCRA 683, 692 [Per J. Perlas-Bernabe, En Banc].

[48] 257 Phil. 930 (1989) [Per J. Sarmiento, En Banc].

[49] 507 Phil. 397 (2005) [Per J. Carpio Morales, Third Division].

[50] Rollo, pp. 19-22.

[51] Id. at 20.

[52] See Boy Scouts of the Philippines v. Commission on Audit, 666 Phil. 140 (2011) [Per J. Leonardo-De Castro, En Banc].

[53] LABOR CODE, art. 291 provides:

Art. 291. Money claims. All money claims arising from employer-employee relations accruing during the effectivity of this Code shall be filed within three (3) years from the time the cause of action accrued; otherwise they shall be forever barred.

All money claims accruing prior to the effectivity of this Code shall be filed with the appropriate entities

established under this Code within one (1) year from the date of effectivity, and shall be processed or determined in accordance with the implementing rules and regulations of the Code; otherwise, they shall be forever barred.

Workmen's compensation claims accruing prior to the effectivity of this Code and during the period from November 1, 1974 up to December 31, 1974, shall be filed with the appropriate regional offices of the Department of Labor not later than March 31, 1975; otherwise, they shall forever be barred. The claims shall be processed and adjudicated in accordance with the law and rules at the time their causes of action accrued.

[54] Rollo,p. 19.

[55] Code of Professional Responsibility, Canon 17 provides:

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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