

## **ATTY. DELIO M. ASERON, COMPLAINANT, VS. ATTY. JOSE A. DIÑO, JR., RESPONDENT.**

*A.C. No. 10782. September 14, 2016*

Ponente: REYES, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/a-c-no-10782/>

---

### **REYES, J.:**

In a verified complaint[1] filed before the Commission on Bar Discipline (CBD) of the Integrated Bar of the Philippines (IBP), Atty. Delio M. Aseron (complainant) sought the disbarment of Atty. Jose A. Diño, Jr. (respondent) for his alleged violations of the Code of Professional Responsibility (CPR).

#### The Facts of the Disbarment Case

On January 25, 2009, the complainant figured in a vehicular accident along Commonwealth Avenue, Quezon City with a bus operated by Nova Auto Transport, Inc. (NATI) which, at that time, was driven by Jerry Garcia (Garcia).[2]

Consequently, the complainant filed the following cases: (i) a criminal case against Garcia for Reckless Imprudence Resulting in Damage to Property with Serious Physical Injuries docketed as Criminal Case No. 025403 before the Metropolitan Trial Court of Quezon City, Branch 36; (ii) a civil case for Damages against Garcia and NATI docketed as Ci Case No. Q-09-64558 before the Regional Trial Court of Quezon City, Branch 105. In both instances, the respondent is the counsel of record for Garcia and NATI.[3]

On March 3, 2009, Atty. Alberto H. Habitan, counsel for complainant, demanded from NATI damages in the amount of not less than Two Million Pesos (P2,000,000.00) as a result of the accident.[4]

The complainant, however, claimed that the respondent's reply letter[5] dated March 20, 2009, was couched in abusive, disrespectful language, malicious and unfounded accusations and besmirched his reputation.[6] The reply letter in part stated:

With reference to said Criminal Case No. 09-025403, we received information that [the complainant] allegedly used his "influence" in persuading the former handling Prosecutor of Inquest Case No. 09-388, not to allow the release of the Passenger Bus with Plate No. TWL-653, unless our client agrees to immediately pay the mercenary claim of Php 2 Million as demanded by [the complainant]. Fortunately, our client heeded our Law Office's persistent advice not to fall prey to such hustler tactic.[7]

Due to the insinuations made by the respondent in his reply letter, the complainant was constrained to file a libel case against the former before the Office of the City Prosecutor of Quezon City.[8]

Also, the complainant asseverated that the respondent made a mockery of the judicial system by employing unwarranted dilatory tactics in Criminal Case No. 025403 and Civil Case No. Q-09-64558 by filing numerous motions that were eventually denied by the courts for lack of merit.[9]

Moreover, the complainant alleged that the respondent committed malpractice by misleading the court when he

admitted ownership of the passenger bus with body number 054 and plate number TWC 653 as that of NATI in one pleading and denying it in another.[10]

On February 11, 2010, the IBP-CBD issued an Order[11] directing the respondent to file his Answer within a period of 15 days from receipt thereof. The respondent, however, failed to file his Answer within the period given to him.

On August 9, 2010, the IBP-CBD issued a Notice[12] directing the parties to attend a mandatory conference. The parties were likewise ordered to submit their respective briefs at least three days prior to the scheduled conference.

On April 6, 2011, the IBP-CBD issued an Order[13] declaring the case submitted for resolution due to the respondent's failure to attend the mandatory conference and to file his brief.

#### Resolutions of the IBP

On November 6, 2011, Commissioner Oliver A. Cachapero (Commissioner Cachapero) issued his Report and Recommendation[14] recommending that a penalty of censure be meted against the respondent for failure to conduct himself toward his fellow lawyer with courtesy.

On February 12, 2013, the IBP Board of Governors issued a Resolution[15] adopting and approving the Report and Recommendation of Commissioner Cachapero after finding that the respondent breached his ethical duties as a lawyer and that the same is fully supported by the evidence on record and the applicable laws and rules.

The respondent, on May 16, 2013, filed his motion for reconsideration[16] but the same was denied by the IBP Board of Governors in a Resolution[17] dated September 27, 2014 it being a mere reiteration of the matters which had already been threshed out and taken into consideration. The IBP Board of Governors, however, modified the penalty by increasing it from censure to reprimand.

Undaunted, the respondent filed a Motion for Leave to File and to Admit Motion for Reconsideration[18] on April 15, 2015 praying that second motion for reconsideration[19] be given due course.

#### Issue

Essentially, the sole issue in the present case is whether or not there is sufficient evidence on record to hold the respondent liable for violation of the CPR.

#### Ruling of the Court

The rule does not recognize the filing of a second Motion for Reconsideration

In Bar Matter No. 1755, the Court emphasized the application of Section 12, Rule 139-B of the Rules of Court, thus:

In case a decision is rendered by the [Board of Governors] that exonerates the respondent or imposes a sanction less than suspension or disbarment, the aggrieved party can file a motion for reconsideration within the 15-day period from notice. If the motion is denied, said party can file a petition for review under Rule 45 of the Rules of Court with this Court within fifteen (15) days from notice of the resolution resolving the motion. If no motion for reconsideration is filed, the decision shall become final and executory and a copy of said decision shall be furnished this Court.[20]

Clearly, the rule does not recognize the filing of a second motion for reconsideration. In fact, the rule expressly provides that the proper remedy of the losing party is to file a Petition for Review under Rule 45 with this Court.

In accordance, however, with the liberal spirit pervading the Rules of Court and in the interest of substantial justice, the Court treats the second Motion for Reconsideration filed by the respondent as a petition for review under Rule 45. This is consistent with the sui generis nature of disbarment proceedings which focuses on the qualification and fitness of a lawyer to continue membership in the bar and not the procedural technicalities in filing the case.[21]

There is no sufficient reason to reverse the findings of the IBP

Nonetheless, after a careful perusal of the records of the case, the Court agrees with the findings of the IBP-CBD and the Board of Governors that the respondent violated the CPR when he used intemperate language in his letter to the complainant.

Canon 8 of the CPR directs all members of the bar to conduct themselves with courtesy, fairness, and candor towards their fellow lawyers and avoid harassing tactics against opposing counsel. Specifically, in Rule 8.01, the CPR provides:

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

In the present case, the respondent's actions failed to measure up to this Canon. Records show that he imputed to the complainant the use of his influence as a former public prosecutor to harass his clients during the inquest proceedings without sufficient proof or evidence to support the same.

As an officer of the court, the respondent could have aired his charge against the complainant in a proper forum and without using offensive and abusive language. He should refrain from being tempted by the adversarial nature of our legal system to use strong language in pursuit of his duty to advance the interest of his client.[22] Commissioner Cachapero's Report and Recommendation in part stated:

Indeed, there is a strong showing that the Respondent had failed to conduct himself toward his fellow lawyer with that courtesy that all have the right to expect. When he mentioned that Complainant had used his influence in persuading the fiscal, he used a language which was abusive, offensive or otherwise improper. He showed ill-feelings toward Complainant and allowed such feeling to influence him in his conduct and demeanor towards the latter.[23]

The Court has consistently reminded lawyers that though they are entitled to present their 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.[24]

As to the penalty, in *Uy v. Atty. Depasucat*,[25] the Court reprimanded the lawyers for misconduct in using offensive and abusive language in their Manifestation.[26]

Here, considering that the respondent was merely over-zealous in protecting the rights of his client, the Court finds that the recommended penalty by the IBP Board of Governors to reprimand him for the use of intemperate language against his fellow lawyer is proper under the circumstances.

WHEREFORE, premises considered, the Court RESOLVES treat respondent Atty. Jose A. Diño, Jr.'s second Motion for Reconsideration as a Petition for Review under Rule 45, and DENY the same for lack of merit.

Moreover, the Court ADOPTS and AFFIRMS the Resolution No. XXI-2014-597 dated September 27, 2014 of the Integrated Bar of the Philippines Board of Governors meting out the penalty of REPRIMAND against Atty. Jose A. Diño, Jr. for breach of his ethical duties as a lawyer.

**SO ORDERED.**

Velasco, Jr., (Chairperson), Peralta, Perez, and Jardeleza, JJ., concur.

November 17, 2016

**NOTICE OF JUDGMENT**

Sirs / Mesdames:

Please take notice that on September 14, 2016 a Resolution, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on November 17, 2016 at 10:30 a.m.

Very truly yours,

**(SGD)**

**WILFREDO V. LAPITAN**

Division Clerk of Court

[1] Rollo, pp. 2-7.

[2] Id. at 3.

[3] Id. at 2.

[4] Id. at 8-9.

[5] Id. at 10-11.

[6] Id. at 3.

[7] Id. at 10.

[8] Id. at 3.

[9] Id. at 4-6.

[10] Id. at 6.

[11] Id. at 56.

[12] Id. at 59.

[13] Id. at 82.

[14] Id. at 188-191.

[15] Id. at 187.

[16] Id. at 192-215.

[17] Id. at 245-246.

[18] Id. at 255-257.

[19] Id. at 258-276.

[20] Court en banc Resolution Re: Clarification on Rules of Procedure of the Commission on Bar Discipline, B.M. No. 1755, June 17, 2008.

[21] Villatuya v. Atty. Tabalingcos, 690 Phil. 381, 396 (2012).

[22] Saberon v. Atty. Larong, 574 Phil. 510, 516 (2008).

[23] Rollo, p. 190.

[24] Saberon v. Atty. Larong, supra note 22, at 517.

[25] 455 Phil. 9 (2003).

[26] Id. at 22.

**ABOUT BATAS.ORG**

# Study smarter at BATAS.org

*The Philippine bar review and law-school companion built around how your brain actually remembers.*

**The complete Philippine law library - free for everyone.**

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

**Audio case-brief lectures.**

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

**Bar review built on the science of memory.**

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

**The full law-school curriculum.**

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

**Mock exams that tell you where you stand.**

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

**A study planner that keeps you on pace.**

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

**Start free at <https://batas.org>**

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.