

ALVIN Y. FERNANDEZ, COMPLAINANT, VS. ATTY. JOSE A. DIÑO, JR., RESPONDENT.*A.C. No. 13365. September 27, 2022*

Ponente: DIMAAMPAO, J.

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This administrative controversy has its provenance in a disbarment suit[1] (docketed as CBD 14-4126) lodged by Alvin Y. Fernandez (complainant) against Atty. Jose A. Diño, Jr. (respondent) before the Commission on Bar Discipline (CBD) of the Integrated Bar of the Philippines (IBP).

Complainant avouched that he was the plaintiff in an illegal dismissal case[2] (docketed as NLRC NCR 06-08685-10 and thereafter, NLRC NCR LAC No. 06-001442-11) before the National Labor Relations Commission (NLRC) against the respondent's clients, namely: Don Mariano Transit Corporation and Dr. Melissa L. Lim.

On 8 August 2013, respondent filed, on behalf of his clients, a Petition for Review on Certiorari[3] (docketed as G.R. Nos. 207751-52) before this Court, seeking the dismissal of complainant's labor case on the grounds of prescription and laches. At the interregnum, he was notified of the NLRC's dismissal of his labor case, prompting him to move for the reconsideration thereof.[4]

Notwithstanding the NLRC's dismissal of complainant's labor case, the Court denied respondent's aforecited Petition through the Resolution[5] dated 2 September 2013. Consequently, complainant filed an Urgent Manifestation[6] before the NLRC, citing the Court's Resolution in G.R. Nos. 207751-52 to bolster his bid for reconsideration. In turn, respondent filed a Motion to Expunge (Re: Sham Urgent Manifestation),[7] accusing complainant of "[littering] the case records with 'C.M. Recto' manufactured documents" intended to "fool and mislead" the NLRC.

Ultimately, respondent's Motion for Reconsideration[8] in G.R. Nos. 207751-52 was denied by the Court via the Resolution dated 25 November 2013.[9] Immediately thereafter, complainant filed a Very Urgent Manifestation[10] before the NLRC to apprise the tribunal of this development. Unflinching, respondent lodged anew a Motion to Expunge (Re: Sham Very Urgent Manifestation),[11] reiterating that complainant "attempted to fool and mislead" the NLRC by attaching "C.M. Recto" manufactured or bogus documents, i.e., the Supreme Court's Notices of the Resolutions dated 2 September 2013 and 25 November 2013.

In his Complaint,[12] complainant claimed that respondent willfully and viciously maligned and insulted not only him, but also this Court, by branding its official Notices and Resolutions as "C.M. Recto" manufactured or bogus documents. For this reason, complainant implored this Court to disbar respondent.

Thereupon, on 19 February 2018, IBP Investigating Commissioner Ernesto A. Altamira III (Investigating Commissioner) issued his Report and Recommendation,[13] finding respondent to have violated Rule 8.01, Canon 8 and Rule 11.03, Canon 11[14] of the Code of Professional Responsibility (CPR).[15] Likewise, the

Investigation Commissioner held that respondent could not disavow knowledge of the Court's Resolutions in G.R. Nos. 207751-52, as he himself filed a Motion for Reconsideration in relation thereto.

Moreover, considering that respondent was previously admonished by this Court in another disciplinary case^[16] for using intemperate or offensive language, the Investigating Commissioner treated this incident as an aggravating circumstance. Hence, he recommended respondent's suspension from the practice of law for one year.^[17]

On 22 March 2018, the IBP Board of Governors (IBP Board) passed a Resolution, adopting the Report and Recommendation of the Investigating Commissioner. Much to respondent's chagrin, the IBP Board increased the period of his suspension to three years.^[18]

Disgruntled, respondent filed a Verified Omnibus Motion^[19] to reconsider, reverse, and set aside the IBP Board's Resolution, which he deemed an utter nullity for being undated and unnumbered and for being rendered without the conduct of a formal and evidential hearing. By the same token, he imputed serious error and grave abuse of discretion to the IBP for relying solely on complainant's "bare and self-serving allegations, as well as the investigator's patently-biased [sic] conjectures."^[20]

Anent his branding of this Court's Notices and Resolutions in G.R. Nos. 207751-52 as "C.M. Recto" manufactured or bogus documents, respondent explicated that in writing those statements, he referred to the actual photocopies submitted by complainant, and not the rulings of this Court themselves.^[21] He postulated that the Investigating Commissioner "twisted the facts for reasons known only to him"^[22] and erred in taking account his previous disciplinary sanction,^[23] thusly—

138. The similar infraction the investigator referred to was A.C. No. 10782, decided by the Supreme Court in September 2016, and which decision was entered in its book of entries of judgment last 2017. On the other hand, the alleged defamatory language subject of this complaint were contained in pleadings filed last 16 October 2013 and last 14 January 2014, respectively;

139. Thus, to the terribly biased mind of the investigator, the Respondent should have heeded the admonition in 2013 and 2014, although the admonition from the Supreme Court came in 2016. Stated differently, to the biased mind of the investigator, the Respondent should have foreseen in 2013 and 2014 that he would be admonished by the Supreme Court in 2016, such that by failing to foresee and predict in 2013 and 2014 that he would be admonished by the Supreme Court in 2016, then the Respondent deserves a sterner punishment!

140. With all due respect to the IBP Board, if that is not bias, then the Respondent does not know what is. If that is not twisting the facts in order to damage and prejudice him, then the Respondent does not know what is;^[24]

As it happened, respondent unleashed a flurry of analogous motions (dated 24 October 2019,^[25] 14 July 2020,^[26] 22 January 2021,^[27] and 28 October 2021).^[28] Still and all, the IBP Board denied all of them through the Resolution^[29] dated 22 August 2020 and Extended Resolution^[30] dated 28 June 2021.

Discernibly, the pith of the issue lies in whether respondent should be disbarred for denouncing this Court's Notices and Resolutions in G.R. Nos. 207751-52 as "C.M. Recto" manufactured or bogus documents; using offensive and insulting language in his pleadings; and failing to observe and maintain proper and utmost respect due to the courts and to judicial officers, in violation of the CPR.

Upon judicious rumination, this Court adopts the findings of the IBP Investigating Commissioner and the Board of Governors, but modifies the penalty to be imposed upon respondent.

Prefatorily, this Court shall tackle the procedural matters raised by respondent.

Once again, he impugns the IBP Board's 22 March 2018 Resolution for being undated and unnumbered,[31] and for being passed without the conduct of a formal and evidentiary hearing.[32]

Certainly, Rule 139-B of the Rules of Court, as amended, does not explicitly provide that an IBP Board Resolution is rendered null and void by the mere fact of its being undated and unnumbered. In sooth, this Court has, in a number of cases,[33] disregarded this minor lapse so that similar suits may be resolved on their merits.

Equally unavailing is respondent's claim that the IBP Board violated his right to due process when it arrived at its conclusion despite the absence of a formal and evidentiary hearing.[34] On this score, the Court's disquisitions in *Ylaya v. Atty. Gacott*[35] are edifying—

x x x [D]ue process in an administrative context does not require trial-type proceedings similar to those in courts of justice. Where the opportunity to be heard, either through oral arguments or through pleadings, is accorded, no denial of procedural due process takes place. The requirements of due process are satisfied where the parties are afforded a fair and reasonable opportunity to explain their side of the controversy at hand.

Similarly, in *A.Z. Arnaiz Realty, Inc. v. Office of the President*, we held that "due process, as a constitutional precept, does not always, and in all situations, require a trial-type proceeding. Litigants may be heard through pleadings, written explanations, position papers, memoranda or oral arguments. The standard of due process that must be met in administrative tribunals allows a certain degree of latitude [provided that] fairness is not ignored. It is, therefore, not legally objectionable for being violative of due process, for an administrative agency to resolve a case based solely on position papers, affidavits or documentary evidence submitted by the parties." [36]

Here, in lieu of a formal and evidentiary hearing, respondent was allowed to make numerous submissions in the form of Manifestations and Motions before the IBP. Both the Investigating Commissioner and the IBP Board took them into consideration in preparing their respective issuances. Furthermore, as aptly observed by the IBP Board in its Extended Resolution, respondent waived his right to a formal hearing upon his filing of an *Ex Parte* Motion,[37] where, to quote his own declaration, he "waives his right to be present at [the] mandatory conference, and instead, moves [this Commission (CBD of the IBP)] to direct the parties to submit their respective verified position papers on or before 23 January 2017." Undoubtedly, these circumstances demonstrate that due process was accorded to respondent.

The Court now proceeds to rule on the substantive issues.

Rule 138, Section 20, paragraph (f) of the Rules of Court ordains that it is the duty of an attorney "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." Such duty is underscored in Canons 8 and 11 of the CPR—

CANON 8. – A lawyer shall conduct himself with courtesy, fairness, and candor toward his professional colleagues, and shall avoid harassing tactics against opposing counsel.

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

x x x x

CANON 11. – A lawyer shall observe and maintain the respect due to the courts and to judicial officers and should insist on similar conduct by others.

Rule 11.03. – A lawyer shall abstain from scandalous, offensive or menacing language or behavior before the Courts.

To be sure, this Court recognizes the adversarial nature of our legal system which has necessitated lawyers to use strong language in the advancement of the interest of their clients.[38] However, while one may defend his or her client's cause with utmost zeal, such enthusiasm does not justify the use of offensive and abusive language.[39] Every lawyer is mandated to carry out his duty as an agent in the administration of justice with courtesy, dignity, and respect, not only towards his clients, the court, and judicial officers, but equally towards his colleagues in the legal profession.[40]

In the case at bench, respondent has persistently ascribed discourteous and unsupported imputations not only against complainant and his counsel, but also against the Investigating Commissioner, the IBP Board, and Atty. Randall C. Tabayoyong, the Director of Bar Discipline. At this juncture, the asseverations in his Verified Omnibus Motion (to reconsider, reverse, and set aside the IBP Board's Resolution)[41] are quite telling:

x x x x

146. First, and as re-stated in our Rejoinder[42] dated 02 May 2017, the complaint was a SHAM since it was the clear handiwork of a coward, hiding lawyer, who conveniently used his gullible client for personal vendetta, viz.:

'To begin with and certainly not to belittle his person and station in life, the complainant still cannot explain how he, a semi-literate former bus-driver, could file a reply all by himself, in straight [E]nglish at that! Doesn't he owe candor and good faith to the CBD-IBP, by disclosing the identity of the person who wrote or ghost-wrote all of his pleadings in this complaint?[43]

x x x x

The only truth that he stated in his pleadings before this Commission, is that he was hurt, and hurt badly by the Respondent, but even that was a half-truth. He was hurt badly, not because of herein Respondent's alleged abusive language and alleged falsehoods, but that because of the Respondent's legal skills, the millions of pesos that the complainant and his (hiding) lawyer were salivating over, vanished like smoke;'[44]x x x x

148. Very clearly then, the investigator did not come clean with his bias against the Respondent. In short, he made his report and recommendation with an evil eye and an uneven hand against the Respondent;[45]

x x x x

163. In Par. 6 on Page 5 up to Par. 1 on Page 6 of his report, the investigator felt the need to devote kilometric paragraphs to defend and justify how a semi-literate bus driver could write perfect [E]nglish with jurisprudence to boot. According to the investigator, it is con1mon for complainants to hire lawyers to prepare pleadings for them;[46]

Quite palpably, respondent failed to use temperate and respectful language in his Motion for Reconsideration (of the IBP Board's Extended Resolution),[47] where he averred that:

IV. The investigating commissioner and [Tabayoyong] both lied through their teeth, when they uniformly found that the subject Supreme Court resolutions 'were certified by the SC' and that herein Respondent 'called the subject resolutions' as CM Recto manufactured documents.[48]

x x x x

4. Had this Board complied with its duty of thoroughness, then such plainly ridiculous "finding" should have aroused this Board's curiosity on the (calling a spade a spade) hatchet-job perpetrated by the investigating commissioner and Tabayoyong, which in turn should have prompted this Board to painstakingly read, weigh, and calibrate the facts and evidence on record, or the absence thereof;[49]

This Court also echoes with approbation the IBP Board's finding that the following statements in respondent's Motion to Expunge (Re: Sham Urgent Manifestation)[50] warrant his disciplinary sanction:

1. In sheer desperation, the appellee attempted to fool and mislead this Honorable Division with a sham Urgent Manifestation, with bogus documents/attachments to boot;
2. Even a cursory glance at Annexes "A" and "B" of said Urgent Manifestation shows that the same are neither original nor certified true copies. In short, such annexes are obviously "C.M. Recto" manufactured documents;[51]

It is inconsequential whether respondent referred to the photocopies submitted by complainant, and not to the actual rulings of this Court.[52] He could have opted to use temperate, patient, and courteous language, instead of immediately accusing complainant of submitting faux documents, which were eventually revealed to be no different from the actual Notices and Resolutions of this Court. By using crude remarks, respondent went overboard and crossed the line of professional conduct, which this Court must not countenance.

Indeed, a lawyer's language, though forceful and emphatic, must always be dignified and respectful, befitting the dignity of the legal profession. The use of intemperate language and unkind ascriptions has no place in the dignity of the judicial forum. After all, language abounds with countless possibilities for one to be emphatic but respectful, convincing but not derogatory, and illuminating but not offensive.[53]

Anent the proper penalty to be imposed upon respondent, prevailing jurisprudence[54] shows that the Court has consistently imposed a suspension of one year on lawyers found guilty of using intemperate or offensive language. All the same, the Court is mindful of respondent's previous disbarment in *Vantage Lighting Philippines, Inc. v. Diño, Jr.*[55] for gross misconduct. In *In Re: Order Dated October 27, 2016 issued by Branch 137, Regional Trial Court, Makati in Criminal Case No. 14-765*, the Court held that the penalty of suspension or disbarment can no longer be imposed upon a previously disbarred lawyer, except for recording purposes.[56] Accordingly, while respondent was previously disbarred, the Court deems it proper to impose upon him the penalty of suspension from the practice of law for a period of one year, for the sole purpose of recording it in his personal file in the Office of the Bar Confidant (OBC). In the event that he files a petition to lift his disbarment, the penalty in the present case shall be considered.

WHEREFORE, Atty. Jose A. Diño, Jr. is hereby declared GUILTY of violating Rule 8.01, Canon 8, and Rule 11.03, Canon 11 of the Code of Professional Responsibility. He is SUSPENDED from the practice of law for one (1) year. Nevertheless, considering that he was previously disbarred, his suspension is only for the sole purpose of recording it in his personal file in the Office of the Bar Confidant (OBC).

Let copies of this Decision be furnished the OBC, to be appended to personal record of Atty. Jose A. Diño, Jr. as an attorney; the Integrated Bar of the Philippines, for their information and guidance; and the Office of the Court Administrator, for dissemination to all the courts in the country.

SO ORDERED.

Leonen,[**] (Acting C.J.), Caguioa, Hernando, Lazaro-Javier, Inting, Zalameda, Gaerlan, Rosario, J. Lopez, Marquez, Kho, Jr., and Singh, JJ., concur.
Gesmundo,[*] C.J. and M. Lopez, J.,[***] on official business.

[*] On official business, per Special Order No. 2914 dated September 15, 2022.

[**] Designated as Acting Chief Justice, per Special Order No. 2914 dated September 15, 2022.

[***] On official business.

[1] Rollo, pp. 1-9.

[2] Id. at 2.

[3] Id. at 10-37. Note: Error in pagination; pages are not in order.

[4] Id. at 2.

[5] Id. at 129.

[6] Id. at 67-69.

[7] Id. at 257-258.

[8] Id. at 59-65.

[9] Id. at 130-131.

[10] Id. at 76-78.

[11] Id. at 81-82.

[12] Id. at 1-9.

[13] Rollo, pp. 319-329.

[14] CANON 8. – A lawyer shall conduct himself with courtesy, fairness, and candor toward his professional colleagues, and shall avoid harassing tactics against opposing counsel.

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

x x x x

CANON 11. – A lawyer shall observe and maintain the respect due to the courts and to judicial officers and should insist on similar conduct by others.

Rule 11.03. – A lawyer shall abstain from scandalous, offensive or menacing language or behavior before the Courts.

[15] Rollo, p. 326.

[16] See Aseron v. Atty. Diño, Jr., A.C. No. 10782, 14 September 2016.

[17] Rollo, p. 329.

[18] Id. at 328.

[19] Id. at 330-394.

[20] Id. at 366 and 376-381.

[21] Id. at 376-381.

[22] Id. at 378.

[23] Id. at 367.

[24] Id.

[25] Id. at 399-404.

[26] Id. at 407-410.

[27] Id. at 412-415.

[28] Id. at 421-429.

[29] Id. at 447.

[30] Id. at 449-452.

[31] Rollo, p. 330.

[32] Id. at 340-343.

[33] See *Cerdan v. Atty. Gomez*, A.C. No. 9154, 19 March 2012, and *Molina v. Atty. Magat*, A.C. No. 1900, 13 June 2012.

[34] Rollo, pp. 340-343.

[35] A.C. No. 6475, 30 January 2013.

[36] Id.

[37] Rollo, pp. 157-158.

[38] See *Sanchez v. Atty. Aguilos*, A.C. No. 10543, 16 March 2016.

[39] See *Malabed v. Atty. Dela Peña*, A.C. No. 7594, 9 February 2016; citing *Saberon v. Larong* 574 Phil. 510, 517 (2008).

[40] See *Sanchez v. Atty. Aguilos*, *supra* note 38.

[41] Rollo, pp. 330-394.

[42] Id. at 293-296.

[43] Id. at 368-369. Emphasis supplied.

[44] Id. at 369. Emphasis supplied.

[45] Id. at 370. Emphasis supplied.

[46] Id. at 374. Emphasis supplied.

[47] Id. at 421-430.

[48] Id. at 422.

[49] Id.

[50] Id. at 268-269.

[51] Id. Emphasis supplied.

[52] Id. at 376-381.

[53] See *Velasco v. Atty. Causing*, A.C. No. 12883, 2 March 2021.

[54] *Id.* See also *Belo-Henares v. Atty. Guevarra*, A.C. No. 11394, 1 December 2016.

[55] A.C. No. 7389, 2 July 2019.

[56] See A.C. No. 12456, 8 September 2010.

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