

MYRNA D. ROQUE AND ROBERTO P. CRUZADO, COMPLAINANTS, VS. ATTY. FELICIANO B. CLEMENCIO, RESPONDENT.

A.C. No. 3187. August 14, 1992

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

In a verified complaint filed 17 February 1988 by Myrna D. Roque and Roberto P. Cruzado, Atty. Feliciano B. Clemencio was charged with gross misconduct and oppression. Eventually, the complaint was referred to the Integrated Bar of the Philippines for investigation, report and recommendation.

Briefly, complainants charge that –

1. Respondent, a Legal Officer of the Commission on Audit appointed to investigate the charges filed by complainant Myrna D. Roque against a COA official Jovencio Pano, displayed bias and partiality amounting to abuse of discretion: (a) respondent was “drinking and eating and making merry with the lawyer of Pano at Balay Kaldingan, a restaurant cum beerhouse”;^[1] (b) respondent sat on the case filed by complainant against Pano for almost a year;^[2] (c) respondent conspired with Atty. Rogelio Tablang, then Division Chief of the COA Legal Office, to whom the case was assigned after respondent was relieved upon motion of complainant; and, (d) respondent drafted the decision in the case against Pano even after the former was relieved of his assignment as “investigator” in the case.^[3]

2. Respondent is guilty of oppression for having summoned complainant Roberto P. Cruzado to the Office of the Chief, Security Affairs Service Unit, COA, and threatened him.

In his answer, respondent denies the allegations of the complainants and avers that the complaint was filed “purely out of malice and with an evil design to harass respondent.”^[4]

After hearing, the IBP rendered a decision^[5] on 28 November 1991, dismissing the complaint against Atty. Feliciano B. Clemencio for lack of merit, ruling that (a) respondent could not have been guilty of abuse of discretion as he was not vested with such discretion in the first place;^[6] (b) intimacy or friendship between a judge and an attorney of record of one of the parties to a suit is not ground for disqualification, and that in the case at bar, respondent was not even a judge clothed with any discretionary power;^[7] (c) respondent cannot be validly blamed for the supposed “inaction” as he was already relieved from acting on the Pano case effective 14 May 1987 and the records show that he was no longer Legal Officer as early as 1 March 1987;^[8] (d) there is no proof, that respondent conspired with Atty. Rogelio Tablang and in fact, complainants never filed a case against the latter;^[9] (e) the draft decision was written by the respondent, as directed by his superiors at the COA Legal Office, who reviewed the same, and a “draft” decision is nothing but a scrap of paper until the same is finalized and signed by the persons vested by law to sign the same;^[10] and, (f) respondent could not be guilty of oppression since complainant Cruzado was “invited” by the Chief of the Security Affairs Service Unit himself in the latter’s official capacity and was not summoned by the respondent, and although respondent was present and admitted informing complainant Cruzado the expenses the latter may incur in the event a case was filed against

him (Cruzado), "a threat to prosecute is not considered an intimidation." [11]

We differ from the findings and recommendation of the IBP. Although there may not be sufficient evidence to prove that respondent Atty. Feliciano B. Clemencio acted with abuse of discretion resulting in gross misconduct. We believe nevertheless that he displayed ethical infractions.

Undisputedly, as specified in COA Office Order No. 86-9877, [12] respondent was tasked to conduct the formal investigation in Adm. Case No. 86-884 filed by complainant Roque against Panelo, and thereafter to submit his findings and recommendation. What facts to include or exclude in his report, his findings and how to support them, as well as his recommendation – all these necessarily entail the exercise of sound discretion and impartial judgment.

Admittedly, it was respondent himself who drafted the decision in the case, which draft became the basis for the final adjudication adopted by the COA. Indeed, the manner of presenting the facts and the consequent recommendation can influence the reviewing authority. In fact, a perusal of both the draft decision submitted by respondent [13] and the decision finally adopted by the COA [14] would reveal that, except for the difference in the penalties imposed, the final decision had all the earmarks of the preliminary draft. Thus, respondent should have refrained from drinking and dining with Panelo's counsel. It is a rule of general application that an attorney (much more an investigator, as in the case of respondent) should avoid, if not altogether eliminate, even the slightest appearances of impropriety.

Moreover, we find it difficult to believe that the reason why complainant Cruzado was "invited" to report to the Security Affairs Service Unit was precisely to protect his rights, as claimed by respondent. When a lowly employee is summoned to appear before the Chief Security Officer and there questioned by a lawyer who is his superior, and who happens in this case to be respondent himself, and warned of dismissal from employment, a possible litigation and its dire consequences, that employee is, in effect, under threat or intimidation.

The excuse of respondent that a threat to prosecute is no intimidation deserves scant consideration. The instant complaint involves the fitness of a lawyer to continue his membership with the Philippine Bar, where he is expected to promote respect for law and legal processes. For sure, We are not here concerned with intimidation as a requisite to vitiate consent in entering into contracts, as cited by respondent to support his argument. Here, We take into serious account the fact that respondent is a lawyer, a superior who threatened a subordinate complainant with dismissal and a court suit. A man of the law should never use his legal expertise and influence in order to frighten or coerce anyone, specially the ordinary man who looks up to him for justice.

Thus, We remind respondent Atty. Feliciano B. Clemencio of his duties and responsibilities as a lawyer. Rule 1.01, Canon 1 of the Code of Professional Responsibility provides that a lawyer shall not engage in unlawful, immoral or deceitful conduct. A member of the Bar must act with integrity, honesty and professional decorum. He must comport himself in a manner which will secure and preserve the respect and confidence of the public. Both his professional and personal conduct must be kept beyond reproach and above suspicion. He is required not only in fact to be of good moral character, but must also be seen to be leading a life in accordance with the highest moral standards of the community. His deportment should be characterized by candor, competence and fairness. One of his duties is to maintain the high ethical standards of the legal profession. Accordingly, respondent must be censured for his failure to comply with the ethical standards required of members of the Bar as officers of the Court.

WHEREFORE, respondent, ATTY. FELICIANO B. CLEMENCIO, is hereby CENSURED for conduct unbecoming a member of the Bar, and WARNED that a repetition of the same or similar conduct will be dealt with more severely.

Let copies of this Resolution be FURNISHED the Bar Confidant and the Integrated Bar of the Philippines and spread in the personal records of respondent.

SO ORDERED.

Cruz, (Chairman), Griño-Aquino, and Medialdea, JJ., concur.

[1] Complaint, par. 10, p. 2.

[2] Reply, p. 3.

[3] Ibid., par. 7, pp. 5-6.

[4] Comment, pp. 13-15.

[5] Signed by Numeriano G. Tanopo, Jr., President (Chairman); Ernesto S. Salunat, Governor, Northern Luzon; Jose Aguila Grapiñon, Governor, Southern Luzon Region; Baldomero C. Estenzo, Governor, Eastern Visayas Region; Teodoro D. Nano, Jr., Governor, Eastern Mindanao Region; and Didagen P. Dilangalen, Governor, Western Mindanao Region.

[6] Decision, IBP, pp. 11-12.

[7] Ibid, p. 13.

[8] Ibid., p. 15.

[9] Ibid., p. 14.

[10] Ibid., p. 12.

[11] Ibid., p. 17.

[12] Rollo, p. 35.

[13] Annex 11.

[14] Annex 12.

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