

FERDINAND A. CRUZ, COMPLAINANT, VS. ATTY. STANLEY CABRERA, RESPONDENT.

A.C. No. 5737. October 25, 2004

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

In an administrative complaint dated July 7, 2002, Ferdinand A. Cruz charges Atty. Stanley Cabrera with misconduct in violation of the Code of Professional Responsibility.

Complainant alleges that he is a fourth year law student; since the latter part of 2001, he instituted several actions against his neighbors; he appeared for and in his behalf in his own cases; he met respondent who acted as the counsel of his neighbors; during a hearing on January 14, 2002, in one case before the Regional Trial Court, Branch 112, Pasay City, presided by Judge Caridad Cuervo, the following exchange transpired:

xxx xxx So, may we know your honor, if he is a lawyer or not?

The Court having been inhibited by the respondent from hearing the case, replied:

You are asking for my inhibition and yet you want me to rule on his appearance xxx xxx.

Thereafter, the respondent said:

Because your honor, he (pertaining to the complainant) is misrepresenting himself to be a lawyer!

To this the complainant remarked:

“Your Honor, I’m not xxx xxx.”

Respondent, this time engulfed with anger in a raising voice said:

Appear ka ng appear, pumasa ka muna; x x x.

Respondent’s imputations were uncalled for and the latter’s act of compelling the court to ask complainant whether he is a lawyer or not was intended to malign him before the public, inasmuch as respondent knew that complainant is not a lawyer, having appeared for and in his behalf as a party litigant in prior cases; respondent’s imputations of complainant’s misrepresentation as a lawyer was patently with malice to discredit his honor, with the intention to threaten him not to appear anymore in cases respondent was handling; the manner, substance, tone of voice and how the words “appear ka ng appear, pumasa ka muna!” were uttered were totally with the intention to annoy, vex and humiliate, malign, ridicule, incriminate and discredit complainant before the public.

Complainant claims that respondent’s display of improper attitude, arrogance, misbehavior, misconduct in the performance of his duties both as a lawyer and officer of the court, before the public and the court, was a patent transgression of the very ethics that lawyers are sworn to uphold in their dealings with society and corresponding appropriate penalty or sanctions for the said administrative violations should be imposed on the respondent.

In his Comment, respondent contends that the complaint filed against him is a vicious scheme to dissuade him from appearing as counsel for the Mina family against whom complainant had filed several civil and criminal cases including him to further complainant's illegal practice of law; complainant's complaint occurred during a judicial proceeding wherein complainant was able to represent himself considering that he was appearing in barong tagalog thus the presiding judge was misled when she issued an order stating "[i]n today's hearing both lawyers appeared;" because of which, respondent stated: "Your honor I would like to manifest that this counsel (referring to complainant) who represents the plaintiff in this case is not a lawyer," to which complainant replied: "The counsel very well know that I am not yet a lawyer;" the reason he informed the court that complainant is not a lawyer was because the presiding judge did not know that complainant is not a lawyer and complainant did not inform the presiding judge that he is not a lawyer when he stated: "for the plaintiff your honor;" he stated "pumasa ka muna" out of indignation because of complainant's temerity in misrepresenting himself as lawyer; it is surprising that the City Prosecutor of Pasay City filed a complaint for oral defamation against him considering that in a precedent case the Supreme Court stated: "It is a settled principle in this jurisdiction that statements made in the course of judicial proceedings are absolutely privileged (Navarrete vs. Court of Appeals, 325 SCRA 540);" in another malicious prosecution being perpetuated by the complainant against the Mina family pending before Judge Priscilla Mijares of RTC Branch 108, Pasay City, they were able to prohibit the appearance of complainant as counsel for himself as authenticated by an Order of Judge Priscilla Mijares which allegedly stated among other; to wit:

In connection with Ferdinand A. Cruz's motion to appear as counsel, the motion is likewise denied, movant not having satisfied the requirements and conditions under Rule 138-A, Sections 1 and 2.

Respondent alleges that when complainant filed an administrative case against Judge Priscilla Mijares when said Judge stated in Tagalog in open court "Hay naku masama yung marunong pa sa Huwes! OK?" the same was dismissed by the Honorable Court's Third Division which stated among others: "That the questioned remarks of respondent were uttered more out of frustration and in reaction to complainant's actuations and taking into account that complainant is not yet a lawyer but was already lecturing the court on a matter which is not even a point of discussion was sheer arrogance on the part of the complainant." Respondent prays that the complaint against him be dismissed for lack of merit.

The administrative case was referred to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

In a report, dated March 4, 2004, IBP Commissioner Lydia A. Navarro recommended respondent's suspension from the practice of law for a period of three months for violating Rule 8.01 of the Code of Professional Responsibility which provides:

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

In her report, Commissioner Navarro stated:

After going over the evidence submitted by the parties, the undersigned noted that respondent's averment that the utterances he made in open court is (sic) privileged communication does not hold water for the same was (sic) not relevant to the issue of the case in question under trial before the said court.

Respondent did not refute the fact that the same utterances he made in open court against the complainant had been the basis for his indictment of Oral Defamation and later Unjust Vexation under Criminal Cases Nos. 02-1031 and No. 02-2136 respectively, pending trial before MTC Branch 45, Pasay City.

Likewise respondent did not refute complainant's allegation that in 1979 he was held in contempt and was not

allowed to practice law for seven years by the Supreme Court in the administrative case filed against him by Emilia E. Andres on December 14, 1979 docketed as A.M. L-585 for his fondness in using contumacious language in his dealing with others.

From the facts obtaining, it is apparent that the utterance hurled by the respondent in the manner, substance and tone of his voice which was not refuted by him “that appear ka ng appear, pumasa ka muna” in whatever manner it was uttered are in itself not only abusive but insulting specially on the part of law students who have not yet taken nor passed the bar examination required of them.

Respondent should have been more discreet and cautious in informing the court if it was his purpose relative to complainant’s appearance in court; although the latter appeared only in his behalf but not for others if he had complied with the requirements of Rule 138 (Sections 1 and 3) of the Rules of Court.

Respondent should have been more temperate in making utterances in his professional dealings so as not to offend the sensitivities of the other party as in this case

On April 16, 2004, the IBP Board of Governors passed a Resolution to annul and set aside the recommendation of the investigating commissioner and to approve the dismissal of the case for lack of merit.

Prefatorily, we note that the IBP Board of Governors failed to observe the procedural requirements of Sec. 12 of Rule 139-B of the Rules of Court on review and decision by the Board of Governors which states:

SEC. 12. Review and decision by the Board of Governors. – (a) Every case heard by an investigator shall be reviewed by the IBP Board of Governors upon the record and evidence transmitted to it by the Investigator with his report. The decision of the Board upon such review shall be in writing and shall clearly and distinctly state the facts and the reasons on which it is based. It shall be promulgated within a period not exceeding thirty (30) days from the next meeting of the Board following the submittal of the Investigator’s report. (Emphasis supplied)

In *Teodosio vs. Nava*,^[1] the Court stressed the important function of the requirement that the decision of the Board of Governors state the facts and the reasons on which it is based, which is akin to what is required of the decisions of courts of record, thus:

For aside from informing the parties the reason for the decision to enable them to point out to the appellate court the findings with which they are not in agreement, in case any of them decides to appeal the decision, it is also an assurance that the judge, or the Board of Governors in this case, reached his judgment through the process of legal reasoning.^[2]

In this case, the Board of Governors’ resolution absolving respondent of any misconduct does not contain any findings of facts or law upon which it based its ruling. Ordinarily, non-compliance with the rule would result in the remand of the case. Nonetheless, where the controversy has been pending resolution for quite sometime and the issues involved could be resolved on the basis of the records on appeal, the Court has opted to resolve the case in the interest of justice and speedy disposition of cases.^[3] This case falls within the exception.

We hold that respondent’s outburst of “appear ka ng appear, pumasa ka muna” does not amount to a violation of Rule 8.01 of the Code of Professional Responsibility.

Based on the facts of this case, such outburst came about when respondent pointed out to the trial court that complainant is not a lawyer to correct the judge’s impression of complainant’s appearance, inasmuch as the judge, in her Order of January 14, 2002, noted that complainant is a lawyer.^[4] Such single outburst, though uncalled for, is not of such magnitude as to warrant respondent’s suspension or reproof. It is but a product of impulsiveness or the heat of the moment in the course of an argument between them. It has been said that lawyers should not be held to too strict an account for words said in the heat of the moment, because of chagrin at losing

cases, and that the big way is for the court to condone even contemptuous language.[5]

Nonetheless, we remind respondent that complainant is not precluded from litigating personally his cases. A party's right to conduct litigation personally is recognized by Section 34 of Rule 138 of the Rules of Court:

SEC. 34. By whom litigation conducted. -- In the court of a justice of the peace a party may conduct his litigation in person, with the aid of an agent or friend appointed by him for that purpose, or with the aid of an attorney. In any other court, a party may conduct his litigation personally or by aid of an attorney, and his appearance must be either personal or by a duly authorized member of the bar.

In *Maderada vs. Mediodea*,[6] this Court expounded on the foregoing provision, thus:

This provision means that in a litigation, parties may personally do everything during its progress -- from its commencement to its termination. When they, however, act as their own attorneys, they are restricted to the same rules of evidence and procedure as those qualified to practice law; otherwise, ignorance would be unjustifiably rewarded. Individuals have long been permitted to manage, prosecute and defend their own actions; and when they do so, they are not considered to be in the practice of law. "One does not practice law by acting for himself any more than he practices medicine by rendering first aid to himself."

The practice of law, though impossible to define exactly, involves the exercise of a profession or vocation usually for gain, mainly as attorney by acting in a representative capacity and as counsel by rendering legal advice to others. Private practice has been defined by this Court as follows:

x x x. Practice is more than an isolated appearance, for it consists in frequent or customary action, a succession of acts of the same kind. In other words, it is frequent habitual exercise. Practice of law to fall within the prohibition of statute [referring to the prohibition for judges and other officials or employees of the superior courts or of the Office of the Solicitor General from engaging in private practice] has been interpreted as customarily or habitually holding one's self out to the public, as a lawyer and demanding payment for such services. x x x.

Clearly, in appearing for herself, complainant was not customarily or habitually holding herself out to the public as a lawyer. Neither was she demanding payment for such services. Hence, she cannot be said to be in the practice of law.[7]

On the other hand, all lawyers should take heed that lawyers are licensed officers of the courts who are empowered to appear, prosecute and defend; and upon whom peculiar duties, responsibilities and liabilities are devolved by law as a consequence. Membership in the bar imposes upon them certain obligations. Mandated to maintain the dignity of the legal profession, they must conduct themselves honorably and fairly.[8] Though a lawyer's language may be forceful and emphatic, it should 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 judicial forum.[9]

WHEREFORE, the complaint against respondent Atty. Stanley Cabrera for misconduct in violation of the Code of Professional Responsibility is DISMISSED for lack of merit. He is, however, admonished to be more circumspect in the performance of his duties as an officer of the court.

SO ORDERED.

Puno, (Chairman), Callejo, Sr., Tinga, and Chico-Nazario, JJ., concur.

[1] 357 SCRA 406 (2001).

[2] Id., p. 412.

[3] Id., pp. 412-413.

[4] Rollo, p. 9.

[5] In re: Gomez, 43 Phil. 376, 377 (1922).

[6] 413 SCRA 313 (2003).

[7] Id., pp. 324-325.

[8] Reyes vs. Chiong Jr., 405 SCRA 212, 217 (2003).

[9] De la Rosa vs. Sabio, Jr., 407 SCRA 213, 220 (2003).

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