

ATTY. GEORGE C. BRIONES, COMPLAINANT, VS. ATTY. JACINTO D. JIMENEZ,

A.C. NO. 6691. April 27, 2007

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

The root of herein administrative complaint for Disbarment[1] dated August 12, 2004 filed by Atty. George S. Briones charging Atty. Jacinto D. Jimenez with violation of Revised Circular No. 28-91 on forum-shopping and Rule 19.01 and Rule 12.08 of the Code of Professional Responsibility, is the April 3, 2002 Order of the Regional Trial Court (RTC) of Manila in SP Proc. No. 99-92870, entitled, "In the Matter of the Petition for the Allowance of the Will of Luz J. Henson", to wit:

IN VIEW OF THE FOREGOING, the court hereby:

- Reiterates its designation of the accounting firm of Messrs. Alba, Romeo & Co. to immediately conduct an audit of the administration by Atty. George S. Briones of the estate of the late Luz J. Henson, the expenses of which shall be charged against the estate.
- Suspends the approval of the report of the special administrator except the payment of his commission which is hereby fixed at 1.8% of the value of the estate.
- Directs the special administrator to deliver the residue to the heirs in proportion to their shares. From the share of Lilia J. Henson-Cruz, there shall be deducted the advances made to her.

IT IS SO ORDERED.

Complainant Atty. Briones is the Special Administrator of the Estate of Luz J. Henson. Respondent Atty. Jacinto D. Jimenez is the counsel for the Heirs of the late Luz J. Henson (Heirs).

On April 9, 2002, Atty. Jimenez filed with the RTC a notice of appeal from the Order dated April 3, 2002, questioning the payment of commission to Atty. Briones.[2]

On April 29, 2002, Atty. Jimenez filed with the Court of Appeals (CA) a Petition for Certiorari, Prohibition and Mandamus, docketed as CA-G.R. SP No. 70349 assailing the Order dated March 12, 2002, appointing the firm of Alba, Romeo & Co. to conduct an audit at the expense of the late Luz J. Henson, as well as the Order dated April 3, 2002, insofar as it denied their motion for recommendation.[3]

On July 26, 2002, Atty. Jimenez filed with the CA a Petition for Mandamus, docketed as CA-G.R. No. 71844,[4] alleging that the respondent Judge therein unlawfully refused to comply with his ministerial duty to approve their appeal which was perfected on time.[5]

Atty. Briones, in his Comment, contends that the heirs of the late Luz J. Henson, represented by Atty. Jimenez, are guilty of forum shopping for which reason, the petition should be dismissed. [6]

On February 11, 2003, the CA without touching on the forum shopping issue, granted the petition and ordered the respondent Judge to give due course to the appeal taken by Atty. Jimenez from the Order dated April 3, 2002, insofar as it directed the payment of commission to Atty. Briones.[7]

Atty. Briones then filed with this Court a Petition for Review on Certiorari under Rule 45 of the Rules of Court, docketed as G.R. No. 159130, praying for the dismissal of the appeal from the Order dated April 3, 2002, insofar as it ordered the payment of commission to him, as the Special Administrator of the estate of the deceased Luz J. Henson.[8]

The Court gave due course to the petition and required the parties to file their respective memoranda.

Atty. Briones (hereinafter referred to as complainant) filed his "Memorandum with Administrative Complaint for Disbarment against Atty. Jacinto Jimenez, Counsel for Respondents",[9] for violation of Rule 19.01 and Rule 12.08 of the Code of Professional Responsibility and Revised Circular No. 28-91 on forum shopping.

Complainant claims that Atty. Jimenez (hereinafter referred to as respondent) and the Heirs engaged again in forum shopping when respondent, as counsel for the Heirs, filed a criminal complaint and executed an affidavit against complainant for resisting and seriously disobeying the RTC Order dated April 3, 2002 which directed complainant to deliver the residue of the estate to the Heirs in proportion to their shares, punishable under Article 151 of the Revised Penal Code.

Complainant further claims that respondent violated Rules 19.01 and 12.08 of the Code of Professional Responsibility, to wit:

Rule 19.01 — A lawyer shall employ only fair and honest means to attain the lawful objectives of his client and shall not present, participate in presenting or threaten to present unfounded criminal charges to obtain an improper advantage in any case of proceeding.

Rule 12.08 — A lawyer shall avoid testifying in behalf of his client, except:

(a) on formal matters, such as the mailing, authentication or custody of an instrument, and the like; or

b) on substantial matters, in cases where his testimony is essential to the ends of justice, in which event he must, during his testimony, entrust the trial of the case to another counsel.

by filing the unfounded criminal complaint against him to obtain an improper advantage in Special Proceedings No. 99-92870 before the RTC, Branch 46, and coerce complainant to deliver to the Heirs the residue of the estate of the late Luz J. Henson without any writ of execution or any pronouncement from the RTC as to the finality of the Order dated April 3, 2002;[10] and in executing an affidavit in support of the criminal complaint.

The Court in its Resolution dated January 24, 2005, in G.R. No. 159130, resolved to docket the complaint against Atty. Jimenez as a regular administrative complaint; referred said Complaint to the Office of the Bar Confidant (OBC); and required Atty. Jimenez to comment.[11]

Respondent filed his Comment on April 6, 2005. He contends that when he assisted the Heirs in filing a criminal case against complainant, he was merely fulfilling his legal duty to take the necessary steps to protect the interests of his clients; that it cannot serve as basis for filing an administrative case against him.[12] Respondent further cites *Santiago v. Rafanan*[13] where the Court absolved the respondent lawyer from administrative liability in submitting an affidavit in a preliminary investigation in defense of his clients.

On January 31, 2007, the OBC submitted its Report and Recommendation recommending that the administrative complaint against Atty. Jimenez be dismissed for lack of merit.[14]

The Court agrees with the OBC that respondent is not guilty of forum shopping. Records show that respondent, as counsel for the heirs of the late Luz J. Henson, filed a special civil action docketed as CA-G.R. SP No. 70349 assailing the Order of March 12, 2002 appointing the accounting firm of Alba, Romeo and Co. as auditor; and, a regular appeal docketed as CA-G.R. SP No. 71488 assailing the Order of April 3, 2002, insofar as it directed the payment of commission to complainant. It is evident that there is identity of parties but different causes of action and reliefs sought. Hence, respondent is not guilty of forum shopping.[15] The Court likewise finds no fault on the part of respondent in executing an affidavit in support of the criminal complaint as held in the Santiago case.

However, there is sufficient ground in support of complainant's claim that respondent violated Rule 19.01 of the Code of Professional Responsibility. Records reveal that before respondent assisted the Heirs in filing the criminal complaint against herein complainant, he sent demand letters to the latter to comply with the Order of Judge Tipon to deliver the residue of the estate to the heirs of the late Luz J. Henson. Considering that complainant did not reply to the demand letters, respondent opted to file said criminal complaint in behalf of his clients for refusal to obey the lawful order of the court.

The Order referred to is the third part of the assailed Order dated April 3, 2002 which directs complainant to deliver the residue to the Heirs in proportion to their shares. As aptly pointed out by complainant, respondent should have first filed the proper motion with the RTC for execution of the third part of said Order instead of immediately resorting to the filing of criminal complaint against him. A mere perusal of the rest of the Order dated April 3, 2002 readily discloses that the approval of the report of complainant as Special Administrator was suspended prior to the audit of the administration of complainant. Consequently, the RTC would still have to determine and define the residue referred to in the subject Order. The filing of the criminal complaint was evidently premature.

Respondent claims that he acted in good faith and in fact, did not violate Rule 19.01 because he assisted the Heirs in filing the criminal complaint against herein complainant after the latter ignored the demand letters sent to him; and that a lawyer owes his client the exercise of utmost prudence and capability. The Court is not convinced. Fair play demands that respondent should have filed the proper motion with the RTC to attain his goal of having the residue of the estate delivered to his clients and not subject complainant to a premature criminal prosecution.

As held in *Suzuki v. Tiamson*:[16]

Canon 19 of the Code of Professional Responsibility enjoins a lawyer to represent his client with zeal. However, the same Canon provides that a lawyer's performance of his duties towards his client must be within the bounds of the law. Rule 19.01 of the same Canon requires, among others, that a lawyer shall employ only fair and honest means to attain the lawful objectives of his client. Canon 15, Rule 15.07 also obliges lawyers to impress upon their clients compliance with the laws and the principle of fairness. To permit lawyers to resort to unscrupulous practices for the protection of the supposed rights of their clients is to defeat one of the purposes of the state — the administration of justice. While lawyers owe their entire devotion to the interest of their clients and zeal in the defense of their client's right, they should not forget that they are, first and foremost, officers of the court, bound to exert every effort to assist in the speedy and efficient administration of justice.[17]

Although respondent failed to live up to this expectation, there is no evidence that he acted with malice or bad faith. Consequently, it is but fit to reprimand respondent for his act of unfair dealing with complainant. It must be stressed that disbarment is the most severe form of disciplinary sanction, and, as such, the power to disbar must always be exercised with great caution for only the most imperative reasons and in clear cases of misconduct affecting the standing and moral character of the lawyer as an officer of the court and a member of the bar. Accordingly, disbarment should not be decreed where any punishment less severe — such as reprimand,

suspension, or fine — would accomplish the end desired.[18]

WHEREFORE, Atty. Jacinto D. Jimenez is found GUILTY of and REPRIMANDED for violation of Rule 19.01 of the Code of Professional Responsibility.

SO ORDERED.

Ynares-Santiago, (Chairperson), Callejo, Sr., Chico-Nazario, and Nachura, JJ., concur.

[1] Rollo, pp. 2-33.

[2] Id. at 41.

[3] Id.

[4] Entitled, "Lilia J. Henson-Cruz; Ruby J. Henson and Antonio J. Henson, petitioners, versus, Hon. Artemio S. Tipon, in his capacity as Presiding Judge of Branch 46 of the Regional Trial Court of Manila and George C. Briones, Respondents."

[5] Rollo, p. 43.

[6] Id.

[7] Id. at 45.

[8] Id. at 2 and 33. (G.R. No. 159130 is still pending with the Court).

[9] Id.

[10] Id. at 32.

[11] Id.

[12] Id. at 184.

[13] A.C. No. 6252, October 5, 2004, 440 SCRA 91, 103-104.

[14] Rollo, p. 212.

[15] Argel v. Court of Appeals, 374 Phil. 867, 876 (1999).

[16] A.C. No. 6542, September 30, 2005, 471 SCRA 129.

[17] Id. at 139-140.

[18] Id. at 140.

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