ATTY. RICARDO M. ESPINA, COMPLAINANT, VS. ATTY. JESUS G. CHAVEZ, RESPONDENT.

A.C. No. 7250 [Formerly CBD Case No. 05-1448]. April 20, 2015

Ponente: BRION, J.

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BRION, J.:

Before this Court is a Complaint for Disbarment/Suspension[1] that Atty. Ricardo M. Espina (Atty. Espina) filed against Atty. Jesus G. Chavez (Atty. Chavez) with the Integrated Bar of the Philippines (IBP) on March 23, 2005 for violation of Canon 19, Rule 19.01 of the Code of Professional Responsibility.[2]

The IBP Report and Recommendation[3] transmitted to this Court on May 29, 2006 recommended the dismissal of the charge for lack of proof.

On August 28, 2006, Atty. Espina filed with this Court a Petition for Review on Certiorari[4] questioning the IBP findings. On February 28, 2007, Atty. Chavez filed his Comment on the Petition[5] in compliance with our Resolution of December 11, 2006.

The Facts

On November 3, 2004, Atty. Espina and his law firm represented Atty. Espina's parents in an ejectment suit filed against Remedios C. Enguio (Enguio) in the Municipal Trial Court (MTC) of Carmen, Agusan Del Norte. Atty. Chavez who was then a Public Attorney III of the Public Attorney's Office, Regional Office XIII, Butuan City represented Enguio.[6]

On May 20, 2005, the MTC dismissed the ejectment suit for lack of cause of action. On February 13, 2007, the Regional Trial Court (RTC) affirmed the MTC decision.[7] Neither party appealed the RTC decision.

During the pendency of the ejectment suit, Atty. Chavez committed an act apparently in his official capacity, which prompted Atty. Espina to file his Complaint for Disbarment/Suspension with the IBP.

While the narratives of Atty. Espina and Atty. Chavez diverged on many points, the following facts are undisputed and stipulated during the preliminary hearing before the IBP Commissioner on June 24, 2005:[8]

- Atty. Espina's parents, represented by Atty. Espina, filed an ejectment complaint against Enguio, represented by Atty. Chavez.

- During the pendency of the ejectment case, Atty. Espina sent a letter[9] dated December 13, 2004 to the Department of Justice (DOJ) Secretary captioned "Abrasive and harassment tactics of Public Attorney III Jesus G. Chavez." The letter alleged that the Answer Atty. Chavez prepared in the ejectment case contained offensive statements.[10]

- Also while the ejectment case was pending, Atty. Chavez, as a Public Attorney, endorsed through a letter (transmittal letter) to the Provincial Prosecutor,[11] the filing of a criminal complaint for Violation of Article 172

(Falsification by private individual and use of falsified document) of the Revised Penal Code (RPC) against Atty. Espina, his wife (who is a partner in his law office) and his parents.

- The criminal complaint was based on the affidavit-complaint executed by Enguio.[12] In this affidavit-complaint, Enguio alleged that "in order to fashion a case for Ejectment, respondents made an untruthful statement in the narration of facts (par. 4, Article 171)."

The Provincial Prosecutor dismissed the falsification complaint for lack of probable cause.[13]

In the meantime, the DOJ Secretary endorsed Atty. Espina's letter captioned "Abrasive and harassment tactics of Public Attorney III Jesus G. Chavez" to the Office of the Chief Public Attorney (Chief PAO) for action.

The Chief PAO ordered Atty. Chavez to comment on the letter. Atty. Espina then filed his rebuttal to Atty. Chavez's comment.

A portion of Atty. Espina's rebuttal letter reads: "Baka kulang po ng indoctrination itong si Atty. Chavez sa concept ng Torrens system, i-suspend nyo po muna siya not for the purpose of penalizing him but for him to be given time to take continuing legal education on Torrens system. "

The Chief PAO, in her Resolution dated May 5, 2005, dismissed the complaint against Atty. Chavez.

The IBP Report and Recommendation[14]

Based on the facts and as stipulated by the parties, the IBP Commissioner distilled the issues to be resolved as follows:

- Whether or not PAO III Jesus G. Chavez violated Rule 19.01 of Canon 19 of the Code of Professional Responsibility when he prepared and transmitted the complaint of Remedios Enquio for falsification to the Provincial Prosecutor of Agusan del Norte.

- Whether or not the complaint for falsification was an unfounded charge intended to obtain improper advantage in a case or proceeding.

The IBP Commissioner noted that the complaint is anchored on the alleged indispensable assistance extended by Atty. Chavez in the preparation and filing of the falsification complaint, as proven by the transmittal letter to the Provincial Prosecutor.

The IBP Commissioner held that the preparation and transmittal of the criminal complaint to the Provincial Prosecutor's Office is not per se an unfair and dishonest means employed by Atty. Chavez.

The IBP Commissioner found that the criminal charge endorsed by Atty. Chavez was not exactly unfounded or wanting in basis. He observed that the complaint for ejectment contained conflicting averments, i.e., while it is alleged that the discovery of Enguio's occupation of the disputed property was made in November 2003, the letter demand to Enguio to vacate the property (which was attached to the complaint) categorically stated that the defendant had been notified as early as 1997 that her possession and/or occupation of the property was illegal.

The IBP Commissioner - based on her examination of the submitted facts and evidence - concluded that Atty. Chavez was honestly mistaken when he construed the contradictory allegations in the complaint for ejectment as criminal falsification under the Revised Penal Code. He noted that lawyers are not liable for honest mistakes. He dismissed the complaint given the dearth of competent evidence on record to substantiate Atty. Espina's allegation that the transmission of the complaint for falsification was intended to gain an advantage in the civil complaint for ejectment.

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The IBP Board of Governors adopted and approved in toto the IBP Commissioner's report and recommendation.[15]

Our Ruling

We affirm the IBP Report and Recommendation.

The complaint is anchored on the alleged violation by Atty. Chavez of Canon 19, Rule 19.01 of the Code of Professional Responsibility, viz:

> Canon 1: A lawyer shall represent his client with zeal within the bounds of law.
>
> 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 or proceeding.
>
> (Underscoring supplied.)

Atty. Espina contends that Atty. Chavez violated the above-quoted provisions when he indispensably participated in the filing of the falsification complaint against him, his wife and his parents. The falsification case was filed, according to Atty. Espina, solely for the purpose of gaining an improper advantage and leverage in the ejectment case.[16]

Atty. Espina further argues that Atty. Chavez participated in the filing of the baseless criminal complaint by (i) goading Enguio to file the criminal complaint and (ii) ensuring that the criminal complaint was acted upon by the Office of the Provincial Prosecutor by sending the transmittal letter to the said office under Atty. Chavez's signature.[17]

We find Atty. Espina's position unmeritorious and without basis.

What Rule 19.01 prohibits is the filing or the threat of filing patently frivolous and meritless appeals or clearly groundless actions for the purpose of gaining improper advantage in any case or proceeding.[18]

Two elements are indispensable before a lawyer can be deemed to have violated this rule: (i) the filing or threat of filing a patently frivolous and meritless action or appeal and (ii) the filing or threat of filing the action is intended to gain improper advantage in any case or proceeding.

Our jurisprudence is replete with cases on these points.

In Pena v. Atty. Aparicio,[19] the lawyer sent a demand letter to his client's employer which contained threats of filing criminal charges for tax evasion, falsification of documents and cancellation of business license if the separation pay allegedly due to his client was not paid. The lawyer drafted the demand letter in response to the notice to return to work sent by the employer.

We held that Atty. Aparicio did exactly what Canon 19 and its Rules prohibit. The threat to file the cases against the employer was designed to secure leverage to compel the latter to give in to Atty. Aparicio's demands. The letter in this case contained more than just a simple demand to pay. It contained threat to file retaliatory charges against the complainant which had nothing to do with the claim for separation pay. The letter was obviously designed to secure leverage to compel the employer to yield to the client's claims.[20]

In Ong v. Atty. Unto,[21] we reprimanded a lawyer when he sent a demand letter which also contained the threat of various charges against the complainant if the latter failed to comply with the lawyer's demands. The lawyer, in fact, made good his promise when the complainant did not heed his warning. The lawyer filed an array of criminal

and administrative charges against the complainant, which charges were irrelevant to his client's claim.

We held in Ong that:

> It is evident from the records that he tried to coerce the complainant to comply with his letter-demand by threatening to file various charges against the latter. When the complainant did not heed his warning, he made good his threat and filed a string of criminal and administrative cases against the complainant. We find the respondent's action to be malicious as the cases he instituted against the complainant did not have any bearing or connection to the cause of his client.[22]

In Atty. Briones v. Atty. Gimenez,[23] Atty. Briones charged Atty. Gimenez (a special administrator of an estate) for violating Rule 19.01 of the Code of Professional Responsibility. In this case, the Atty. Gimenez filed a criminal complaint[24] against Atty. Briones for resisting and seriously disobeying an order of the trial court in an estate settlement proceeding, directing him (Atty. Briones) to deliver the residue of the estate to the heirs.

We noted that before Atty. Gimenez assisted the heirs in filing the criminal complaint, he sent demand letters to Atty. Briones to comply with the order to deliver the residue of the estate to the heirs. When Atty. Briones did not reply to the demand letters, Atty. Gimenez filed the criminal complaint on behalf of his clients against Atty. Briones for refusing to obey the lawful order of the court.[25]

We held that Atty. Gimenez should have first filed the proper motion with the Regional Trial Court for execution of the order instead of immediately filing the criminal complaint. We concluded that fair play demands that Atty. Gimenez should have filed the proper motion with the Regional Trial Court to attain his goal of having the residue of the estate delivered to his clients, instead of prematurely filing criminal charges against Atty. Briones.[26]

It can be gleamed from the above-cited cases that Rule 19.01 is violated only when the criminal complaint filed or threatened to be filed is patently frivolous, meritless and clearly groundless and is aimed solely at gaining the sole purpose of improper advantage.

In Pena v. Atty. Aparicio, the demand letter was explicit and blatant in its threat of filing several actions (which included tax evasion, a matter totally unrelated to the pending labor case) if the employer failed to accede to the demand for payment of separation pay allegedly due to the employee. It was clearly and obviously done to compel the employer to grant the demand for separation pay.

Similarly, in Ong v. Atty. Unto, the letter contained threats of criminal prosecution if the complainant did not accede to the lawyer's demand. The lawyer subsequently filed totally unrelated and irrelevant criminal and administrative cases against the complainant when the latter failed to comply with the demand letter. Without doubt, these cases were filed to force the complainant to give in to the lawyer's demands.

Finally, in Atty. Briones v. Atty. Gimenez, the criminal complaint was filed after the complainant did not comply with the demand letter. There was also an available remedy in the civil action which could have given effect to Atty. Gimenez's demand without having to file the criminal complaint.

The facts of the present case differed from the above-cited cases. We note that Atty. Espina did not only fail to substantiate his allegation that Atty. Chavez masterminded the filing of the criminal complaint for falsification; he also failed to show that the criminal complaint was patently frivolous, meritless and groundless, and that it was filed to gain improper advantage in favor of his client.

First, the fact that Atty. Chavez endorsed the criminal complaint to the Provincial Prosecutor was, in itself, not contrary to Rule 19.01.

We point out that Atty. Chavez was then a PAO lawyer. In this capacity, he had the duty to assist clients who

could not afford the services of a private lawyer. His assessment on the merit of the criminal complaint might have been erroneous but the act of endorsing the affidavit-complaint to the Provincial Prosecutor did not per se violate Rule 19.01.

Moreover, the affidavit-complaint for Falsification was signed and executed by Enguio and not by Atty. Chavez. Atty. Chavez merely transmitted the affidavit-complaint to the Provincial Prosecutor for the latter's consideration. We cannot conclude, solely given these facts and Atty. Espina's bare assertions, that Enguio was goaded into filing the criminal complaint.

Second, the criminal complaint was not patently frivolous and groundless. It was not unreasonable for Atty. Chavez to conclude (albeit incorrectly according to the assessment of the Provincial Prosecutor) that there was a case for violation of Article 172 of the RPC.

Article 172 in relation to paragraph 4 of Article 171 of the RPC penalizes the making of untruthful statements in a narration of facts. The basis of Enguio's affidavit-complaint was the contrary statements in the ejectment complaint on when Atty. Espina's parents acquired knowledge of Enguio's alleged illegal possession of the property.

The body of the ejectment complaint alleged that the plaintiffs discovered Enguio's illegal possession in November 2003. On the other hand, the letter attached to the complaint explicitly indicated that Enguio has been notified as early as 1997 that her possession and occupation of the land was illegal. This explains Enguio's allegation in her affidavit-complaint that "in order to fashion a case for Ejectment, respondent made an untruthful statement in the narration of facts."

As the IBP Commissioner correctly observed, the criminal complaint was not exactly unfounded or wanting in basis. That it was later dismissed by the Provincial Prosecutor for lack of probable cause is of no consequence. We cannot expect and require Atty. Chavez (or any lawyer for that matter) to be infallible in his judgment on the merit of every criminal charge he endorses to the prosecutor. It is only required that the complaint is not patently frivolous and filed solely to ensure improper advantage.

It is also unwise to characterize every criminal complaint that arose from or is connected with a separate case or proceeding to be within the coverage of Rule 19.01. The better policy is to balance the prohibition under Rule 19.01 with the equally important right of the State to prosecute criminal offenses. We stress that the key test is whether the criminal complaint is patently meritless and clearly filed to gain improper advantage.

Unless the criminal complaint is patently frivolous and obviously meant to secure an improper advantage, a lawyer who files such criminal complaint should not be automatically deemed to have violated Rule 19.01. Otherwise, lawyers who have a valid cause for filing a criminal action may be compelled not to proceed because of fear of administrative sanctions.

Finally, unlike in the cases cited above, there is no clear and concrete proof that the falsification complaint was filed to ensure improper advantage to Enguio.

Other than the fact that the falsification complaint arose from the narration of facts in the ejectment complaint, Atty. Espina failed to show that the falsification complaint was meant to ensure improper advantage to Enguio. Atty. Espina merely made this conclusion by inference but his basic premises were not supported by evidence. We cannot presume that Enguio gained or stood to gain improper advantage to the detriment of Atty. Espina's parents by the mere filing of the falsification complaint. After all, both the ejectment and falsification complaints were eventually dismissed.

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As a final point, we note with concern the excessive antagonism between Atty. Espina and Atty. Chavez. It appears that this case is no longer about the alleged violation of the Code of Professional Responsibility but a protracted and bitter fight between brothers in the legal profession. Both claim that the other party is arrogant and ignorant of the law. The pleadings contained serious attacks on the professional competence and personal integrity of one another. These are acts that this Court should not allow to pass without comments.

We take this occasion to remind lawyers of their duties to their professional colleagues. Rule 8.01 of Canon 8 of the Code of Professional Responsibility is clear: a lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper.

While the fervor shown by Atty. Espina and Atty. Chavez in defending their clients' respective claims has been admirable, we find it unfortunate that they allowed their personal animosity and bruised egos to affect their handling of these cases.

Although we dismiss the present complaint because of lack of merit, we strongly warn both counsels that any future infraction of the Code of Professional Responsibility may warrant actual penalty.

WHEREFORE, premises considered, we hereby AFFIRM the recommendation of the Integrated Bar of the Philippines and DISMISS the Disbarment/Suspension complaint against ATTY. JESUS G. CHAVEZ. At the same time, we warn both counsels about their use of intemperate language in their pleadings and in dealing with one another.

SO ORDERED.

Carpio, (Chairperson), Del Castillo, Mendoza, and Leonen, JJ., concur.

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[1] CBD Case No. 05-1448.

[2] Rollo, p. 106.

[3] Id., unpaged, dated March 24, 2006.

[4] Id., unpaged. The petition is filed pursuant to Rule 139-B, Section 12 of the Rules of Court docketed as G.R. No. 173315. On September 4, 2006, this Court issued a Resolution incorporating G.R. No. 173315 with A.C. No. 7250.

[5] Id., unpaged.

[6] Supra note 1.

[7] Rollo, unpaged. Annex "B" of Respondent's Comment dated February 26, 2007.

[8] Id. at 106-131. Transcript of the hearing of CBD Case No. 05-1448 presided by Commissioner Pedro A. Magpayo, Jr.

[9] Id. at 52-54.

[10] Id. The alleged offensive statements in the Answer prepared by Atty. Chavez quoted in Atty. Espina's letter to the DOJ are as follows:

x x x x x x x x x
7. x x x plaintiffs own Annex C to the Complaint acknowledges that plaintiffs possession dates back to 'as early as 1997,' thus - x x x and therefore, even criminally liable for Falsification.

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> COUNTERCLAIM
>
> 1. x x x the letter even threatened to file criminal cases which is likewise without basis, hence the counsels are administratively liable.
>
> x x x x x x x x x
> 3. x x x This is without prejudice to filing criminal cases against plaintiff and their counsel for Falsification/Perjury. "

[11] Rollo, p. 31. The transmittal letter was dated December 28, 2004.

[12] Id. at 29-30.

[13] Id. at 32-36.

[14] Supra note 3.

[15] Resolution No. XVH-2006-245 dated April 27, 2006.

[16] Supra note 4, at 5-12.

[17] Id.

[18] Que v. Atty. Revilla, Jr., A.C. No. 7054, December 4, 2009, 607 SCRA 1, 14.

[19] A.C. No. 7298, (formerly CBD Case No. 05-1565), 552 Phil. 512 (2007).

[20] Id.

[21] A.C. No. 2417, 426 Phil. 531 (2002).

[22] Id.

[23] A.C. No. 6691, 502 Phil. 402 (2007).

[24] Resistance and disobedience to a person in authority or the agents of such person (punishable under Article 151 of the Revised Penal Code).

[25] Id.

[26] Id.

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