# FERNANDO MARTIN O. PENA, COMPLAINANT, VS. ATTY. LOLITO G. APARICIO, RESPONDENT.

*A.C. NO. 7298 (FORMERLY CBD CASE NO. 05-1565). June 25, 2007*

Ponente: TINGA, J.

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**TINGA, J.:**

In this administrative complaint, a lawyer is charged with violation of Rule 19.01 of Canon 19 of the Code of Professional Responsibility for writing a demand letter the contents of which threatened complainant with the filing of criminal cases for tax evasion and falsification of documents.

Atty. Lolito G. Aparicio (respondent) appeared as legal counsel for Grace C. Hufana in an illegal dismissal case before the National Labor Relations Commission (NLRC). Sometime in August 2005, complainant Fernando Martin O. Pena, as President of MOF Company, Inc. (Subic), received a notice from the Conciliation and Mediation Center of the NLRC for a mediation/conciliation conference. In the conference, respondent, in behalf of his client, submitted a claim for separation pay arising from her alleged illegal dismissal. Complainant rejected the claim as being baseless. Complainant thereafter sent notices to Hufana for the latter to explain her absences and to return to work. In reply to this return to work notice, respondent wrote a letter to complainant reiterating his client's claim for separation pay. The letter also contained the following threat to the company:

> BUT if these are not paid on August 10, 2005, we will be constrained to file and claim bigger amounts including moral damages to the tune of millions under established precedence of cases and laws. In addition to other multiple charges like:
>
> - Tax evasion by the millions of pesos of income not reported to the government.
>
> - Criminal Charges for Tax Evasion
>
> - Criminal Charges for Falsification of Documents
>
> - Cancellation of business license to operate due to violations of laws.
>
> These are reserved for future actions in case of failure to pay the above amounts as settlements in the National Labor Relations Commission (NLRC).[1]

Believing that the contents of the letter deviated from accepted ethical standards, complainant filed an administrative complaint[2] with the Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP). Respondent filed an Answer with Impleader (Motion to Dismiss and Counterclaims)[3] claiming that Atty. Emmanuel A. Jocson, complainant's legal counsel, also played an important part in imputing the malicious, defamatory, and fabricated charges against him. Respondent also pointed out that the complaint had no certification against forum shopping and was motivated only to confuse the issues then pending before the Labor Arbiter. By way of counterclaim, respondent asked for damages and for the disbarment of Atty. Jocson. Respondent also asked the IBP to endorse the prosecution of Atty. Jocson for Usurpation of Public Functions[4] and for violation of the Notarial Law.[5]

A mandatory conference was held on 6 December 2005 but respondent failed to appear.[6] Both parties were thereafter required to submit their position papers.

The Report and Recommendation[7] of Investigating Commissioner Milagros V. San Juan found that complainant, failed to file his position paper and to comply with Administrative Circular No. 04-94 requiring a certificate against forum shopping and, accordingly, recommended the dismissal of the complaint against respondent. On 26 May 2006, the IBP Board of Governors adopted and approved the Report and Recommendation of the Investigating Commissioner.[8] On 10 July 2006, the IBP Commission on Bar Discipline transmitted to the Supreme Court the notice of said Resolution and the records of the case.[9] Thereafter, on 18 August 2006, respondent filed with the IBP a Motion for Reconsideration (for Modification of Decision)[10] reiterating his claim of damages against complainant in the amount of four hundred million pesos (P400,000,000.00), or its equivalent in dollars, for filing the "false, malicious, defamers [sic], fraudulent, illegal fabricators [sic], malevolent[,] oppressive, evasive filing [of] a groundless and false suit."[11]

Complainant thereafter filed this Petition for Review (of the Resolution of the IBP Commission on Bar Discipline)[12] alleging that he personally submitted and filed with the IBP his position paper, after serving a copy thereof on respondent by registered mail. He further alleges that he was deprived of his right to due process when the IBP dismissed his complaint without considering his position paper and without ruling on the merits thereof.

Complainant accordingly prays for the reversal and setting aside of the 26 May 2006 Resolution[13] of the IBP Board of Governors and the remand of the case to the IBP Commission on Bar Discipline for proper adjudication and disposition on the merits.

Based on the records, there is truth to complainant's assertion that he filed his position paper on 21 December 2005, after serving a copy of the same to respondent. The IBP stamp on the front page of said document shows that it was received by the IBP on 21 December 2005. The registry receipt attached to the same document also shows that it was sent by registered mail to respondent on the same date. [14]

Complainant, however, omitted to offer any explanation in his petition before this Court for his failure to attach a certification against forum shopping in his complaint against respondent.

The requirement of a certification against forum shopping was originally required by Circular No. 28-91, dated 8 February 1994, issued by this Court for every petition filed with the Court or the Court of Appeals. Administrative Circular No. 04-94, made effective on 1 April 1994, expanded the certification requirement to include cases filed in courts and quasi-judicial agencies below this Court and the Court of Appeals. Ultimately, the Court adopted paragraphs (1) and (2) of Administrative Circular No. 04-94 to become Section 5, Rule 7 of the 1997 Rules of Civil Procedure.[15] Said rule states that a violation thereof would constitute contempt of court and be cause for the summary dismissal of both petitions without prejudice to the taking of appropriate action against the counsel of the party concerned.[16]

The Investigating Commissioner and the IBP Board of Governors took against complainant his failure to attach the certification against forum shopping to his complaint and consequently dismissed his complaint. This Court, however, disagrees and, accordingly, grants the petition. However, a remand of the case to the IBP would unduly prolong its adjudication.

The Court's determination is anchored on the sui generis nature of disbarment proceedings, the reasons for the certification against forum shopping requirement, complainant's subsequent compliance with the requirement, and the merit of complainant's complaint against respondent.


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The Court, in the case of In re Almacen,[17] dwelt on the sui generis character of disciplinary proceedings against lawyers, thus:

> Disciplinary proceedings against lawyers are sui generis. Neither purely civil nor purely criminal, they do not involve a trial of an action or a suit, but is rather an investigation by the Court into the conduct of one of its officers. Not being intended to inflict punishment, it is in no sense a criminal prosecution. Accordingly, there is neither a plaintiff nor a prosecutor therein. It may be initiated by the Court motu proprio. Public interest is its primary objective, and the real question for determination is whether or not the attorney is still a fit person to be allowed the privileges as such. Hence, in the exercise of its disciplinary powers, the Court merely calls upon a member of the Bar to account for his actuations as an officer of the Court with the end in view of preserving the purity of the legal profession and the proper and honest administration of justice by purging the profession of members who by their misconduct have proved themselves no longer worthy to be entrusted with the duties and responsibilities pertaining to the office of an attorney. In such posture, there can thus be no occasion to speak of a complainant or a prosecutor.[18] [Emphasis supplied]

In view of the nature of disbarment proceedings, the certification against forum shopping to be attached to the complaint, if one is required at all in such proceedings, must refer to another administrative case for disciplinary proceedings against the same respondent, because such other proceedings or "action" is one that necessarily involves "the same issues" as the one posed in the disbarment complaint to which the certification is supposedly to be attached.

Further, the rationale for the requirement of a certification against forum shopping is to apprise the Court of the pendency of another action or claim involving the same issues in another court, tribunal or quasi-judicial agency, and thereby precisely avoid the forum shopping situation. Filing multiple petitions or complaints constitutes abuse of court processes,[19] which tends to degrade the administration of justice, wreaks havoc upon orderly judicial procedure, and adds to the congestion of the heavily burdened dockets of the courts.[20] Furthermore, the rule proscribing forum shopping seeks to promote candor and transparency among lawyers and their clients in the pursuit of their cases before the courts to promote the orderly administration of justice, prevent undue inconvenience upon the other party, and save the precious time of the courts. It also aims to prevent the embarrassing situation of two or more courts or agencies rendering conflicting resolutions or decisions upon the same issue.[21]

It is in this light that we take a further look at the necessity of attaching a certification against forum shopping to a disbarment complaint. It would seem that the scenario sought to be avoided, i.e., the filing of multiple suits and the possibility of conflicting decisions, rarely happens in disbarment complaints considering that said proceedings are either "taken by the Supreme Court motu proprio, or by the Integrated Bar of the Philippines (IBP) upon the verified complaint of any person."[22] Thus, if the complainant in a disbarment case fails to attach a certification against forum shopping, the pendency of another disciplinary action against the same respondent may still be ascertained with ease. We have previously held that the rule requiring a certification of forum shopping to accompany every initiatory pleading, "should not be interpreted with such absolute literalness as to subvert its own ultimate and legitimate objective or the goal of all rules of procedure–which is to achieve substantial justice as expeditiously as possible."[23]

At any rate, complainant's subsequent compliance with the requirement cured the supposed defect in the original complaint. The records show that complainant submitted the required certification against forum shopping on 6 December 2006 when he filed his Comment/Opposition to respondent's Motion to Dismiss the present petition.

Finally, the intrinsic merit of complainant's case against respondent justifies the grant of the present petition. Respondent does not deny authorship of the threatening letter to complainant, even spiritedly contesting the

charge that the letter is unethical.

Canon 19 of the Code of Professional Responsibility states that "a lawyer shall represent his client with zeal within the bounds of the law," reminding legal practitioners that a lawyer's duty is not to his client but to the administration of justice; to that end, his client's success is wholly subordinate; and his conduct ought to and must always be scrupulously observant of law and ethics.[24] In particular, Rule 19.01 commands that 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." Under this Rule, a lawyer should not file or threaten to file any unfounded or baseless criminal case or cases against the adversaries of his client designed to secure a leverage to compel the adversaries to yield or withdraw their own cases against the lawyer's client.[25]

In the case at bar, respondent did exactly what Canon 19 and its Rule proscribe. Through his letter, he threatened complainant that should the latter fail to pay the amounts they propose as settlement, he would file and claim bigger amounts including moral damages, as well as multiple charges such as tax evasion, falsification of documents, and cancellation of business license to operate due to violations of laws. The threats are not only unethical for violating Canon 19, but they also amount to blackmail.

Blackmail is "the extortion of money from a person by threats of accusation or exposure or opposition in the public prints,...obtaining of value from a person as a condition of refraining from making an accusation against him, or disclosing some secret calculated to operate to his prejudice." In common parlance and in general acceptation, it is equivalent to and synonymous with extortion, the exaction of money either for the performance of a duty, the prevention of an injury, or the exercise of an influence. Not infrequently, it is extorted by threats, or by operating on the fears or the credulity, or by promises to conceal or offers to expose the weaknesses, the follies, or the crime of the victim.[26]

In Sps. Boyboy v. Atty. Yabut, Jr.,[27] we held that "[a]n accusation for blackmail and extortion is a very serious one which, if properly substantiated, would entail not only respondent's disbarment from the practice of law, but also a possible criminal prosecution."[28] While the respondent in Boyboy was exonerated for lack of evidence, the same may not be said of respondent in the present case for he admits to writing the offensive letter.

In fact, respondent does not find anything wrong with what he wrote, dismissing the same as merely an act of pointing out massive violations of the law by the other party, and, with boldness, asserting that "a lawyer is under obligation to tell the truth, to report to the government commission of offenses punishable by the State."[29] He further asserts that the writing of demand letters is a standard practice and tradition and that our laws allow and encourage the settlement of disputes.

Respondent's assertions, however, are misleading, for it is quite obvious that respondent's threat to file the cases against complainant was designed to secure some leverage to compel the latter to give in to his client's demands. It was not respondent's intention to point out complainant's violations of the law as he so gallantly claims. Far from it, the letter even contains an implied promise to "keep silent" about the said violations if payment of the claim is made on the date indicated.

Indeed, the writing of demand letters is a standard practice and tradition in this jurisdiction. It is usually done by a lawyer pursuant to the principal-agent relationship that he has with his client, the principal. Thus, in the performance of his role as agent, the lawyer may be tasked to enforce his client's claim and to take all the steps necessary to collect it, such as writing a letter of demand requiring payment within a specified period. However, the letter in this case contains more than just a simple demand to pay. It even contains a threat to file retaliatory charges against complainant which have nothing to do with his client's claim for separation pay. The letter was

obviously designed to secure leverage to compel complainant to yield to their claims. Indeed, letters of this nature are definitely proscribed by the Code of Professional Responsibility.

Respondent cannot claim the sanctuary provided by the privileged communication rule under which a private communication executed in the performance of a legal duty is not actionable. The privileged nature of the letter was removed when respondent used it to blackmail complainant and extort from the latter compliance with the demands of his client.

However, while the writing of the letter went beyond ethical standards, we hold that disbarment is too severe a penalty to be imposed on respondent, considering that he wrote the same out of his overzealousness to protect his client's interests. Accordingly, the more appropriate penalty is reprimand.

WHEREFORE, premises considered, the petition is granted. The 26 May 2006 Resolution of the IBP Board of Governors is hereby REVERSED and SET ASIDE. Respondent Atty. Lolito G. Aparicio is hereby found liable for violation of Rule 19.01 of Canon 19 of the Code of Professional Responsibility, and is accordingly meted out the penalty of REPRIMAND, with the STERN WARNING that a repetition of the same or similar act will be dealt with more severely.

**SO ORDERED.**

Carpio, Acting Chairperson, Carpio-Morales, and Velasco, Jr., JJ., concur.
Quisumbing, (Chairperson), J., on official leave.

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[1] Rollo, pp. 10-11.

[2] Id. at 1-5.

[3] Id. at 21-27.

[4] Respondent claims that Atty. Jocson signed the administrative complaint against him without indicating his Roll of Attorney Number.

[5] Respondent claims that Atty. Jocson notarized the complaint despite the expiration of his notarial commission.

[6] Rollo, p. 49.

[7] Id. at 103-105.

[8] Id. at 102. See Resolution No. XVII-2006-291.

[9] Id. at 101-105.

[10] Id. at 170-177.

[11] Id. at 175.

[12] Id. at 106-115.

[13] Id. at 102.

[14] Id. at 76-88.

[15] Said provision states:

> Sec. 5. Certification against forum shopping. The plaintiff or principal party shall certify under oath in the


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> complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.
>
> Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice unless otherwise provided, upon motion and hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt as well as a cause for administrative sanctions.

[16] Land Car, Inc. v. Dev't Bachelor Express, Inc., 462 Phil. 796, 801 (2003), citing Administrative Circular No. 04-94, April 1, 1994; Fil-Estate Golf and Development, Inc. v. Court of Appeals, 265 SCRA 614; Prubankers Association v. Prudential Bank & Trust Company, 302 SCRA 74.

[17] No. L-27654, 18 February 1970, 31 SCRA 562.

[18] Id. at 600-601.

[19] Wee v. Galvez, G.R. No. 147394, 11 August 2004, 436 SCRA 96, 108-109, citing Zebra Security Agency v. NLRC, Phil. 200, 209.

[20] Id. at 109, citing Nacuray v. NLRC, 336 Phil. 749, 756.

[21] Id., citing Solid Homes, Inc. v. Court of Appeals, 337 Phil. 605, 616.

[22] RULES OF COURT, Rule 139-B, Sec. 1.

[23] Supra note 19, at 110, citing Dar v. Alonzo-Legasto, G.R. No. 143016, 30 August 2000, 339 SCRA 306, 309 citing Gabionza v. Court of Appeals, G.R. No. 112547, 18 July 1994, 234 SCRA 192, 198.

[24] See E.L. PINEDA, LEGAL AND JUDICIAL ETHICS (1995 Ed.), p. 210, citing Maglasang v. People, 190 SCRA 306.

[25] Id. at 213.

[26] See Am. JUR. 2d, Vol. 5, citing Hess v. Sparks, 24 P. 979, 980, 44 Kan. 465, 21 Am.St.Rep. 300.

[27] 449 Phil. 664 (2003).

[28] Id. at 674-675.

[29] Rollo, p. 132.

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