ATTY. ALFONSO L. DELA VICTORIA, COMPLAINANT, VS. ATTY. MARIA FE ORIG- MALOLOY-ON, CLERK OF COURT, MUNICIPAL TRIAL COURT IN CITIES, OFFICE OF THE CLERK OF COURT, DAVAO CITY, RESP...

A.M. NO. P-07-2343 (FORMERLY A.M. OCA IPI NO. 06-2416-P). August 14, 2007

Ponente: NACHURA, J.

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NACHURA, J.:

The Court will never shirk its responsibility to impose discipline upon erring court employees and magistrates, nor hesitate to shield them from unfounded suits that serve only to disrupt, rather than promote, the orderly administration of justice.[1]

We demonstrate the force of this pronouncement in the instant administrative case.

In a sworn letter-complaint[2] dated November 21, 2005, Atty. Alfonso L. Dela Victoria (Atty. Dela Victoria), a former judge, charged Atty. Maria Fe O. Maloloy-on (Atty. Maloloy-on), Clerk of Court of the Municipal Trial Court in Cities (MTCC), Davao City, before the Office of the Court Administrator (OCA) with gross ignorance of the law for her refusal to accept the cash bond being tendered by his clients.

Atty. Dela Victoria alleged that, on November 12, 2005, a Saturday, he went to the Office of the City Prosecutor, Davao City, because his clients, Butch and Excel Verano (Veranos) were being detained by virtue of a warrantless arrest and after an inquest; that he learned that the criminal information against the Veranos, which recommended a bail of P2,000.00 each, had not yet been filed with the proper court as it still lacked the signature of the City Prosecutor; that he went to see the MTCC Executive Judge who suggested that a motion to set bail pursuant to Rule 114, Section 17(c)[3] should be filed; that he then immediately called his secretary, dictated the contents of the motion, and instructed her to immediately bring the motion to court so that the Executive Judge could act on it; that before he left the MTCC, he passed by the Office of the MTCC Clerk of Court offering to post a cash bond of P4,000.00; that Atty. Maloloy-on was out of the office, and so, he simply instructed his daughter-in-law, a relative of the Veranos, to wait for Atty. Maloloy-on and pay the P4,000.00 cash bond; but that later that day, his daughter-in-law reported that Atty. Maloloy-on did not accept the cash bond because no information had yet been filed. He then added that his clients could not avail of the remedy under Rule 114, Section 17(c) because, on Saturdays, the offices of the City Prosecutor and the MTCC Clerk of Court are open only until 12 noon.

Atty. Dela Victoria further alleged that on Thursday, November 17, 2005, he went to see Atty. Maloloy-on to inquire why she refused to accept the cash bond, but that instead of giving a proper explanation, Atty. Maloloy-on "lectured" him, claiming that she could not accept the bond because there was no information to be used as basis, and that the City Prosecutor might quash the information prepared by the inquest Prosecutor; that even as he tried to explain that he had "already made an arrangement with the Executive Judge," Atty. Maloloy-on still insisted and tried to justify her refusal to accept the offered cash bond.

This, according to Atty. Dela Victoria, constituted gross ignorance of the law, even as he said that he would not have filed this complaint if only Atty. Maloloy-on "apologized for her procedural lapses."

In her Comment,[4] Atty. Maloloy-on clarified that the Office of the Clerk of Court holds office from 8:00 a.m. until 4:00 p.m., on Saturdays, and that she was present on November 12, 2005. She narrated that at about 11:30 a.m. that day, she went out of the office to buy lunch; that when she returned ten minutes later, the Veranos, then accompanied by a police officer told her that they were posting a cash bond for their temporary release, and handed her a piece of paper with the amount of P2,000.00 scribbled on it; that after learning that the case was still with the City Prosecutor's Office, she personally went to said office to verify the status of the criminal information; that she was told that it was probably with the City Prosecutor who had already left because it was already noontime; that she went to the Office of the MTCC Executive Judge, but the latter was no longer in the office; that she inquired from Branch Clerk of Court Atty. Zenia Villariza (Atty. Villariza) if Atty. Dela Victoria filed a motion to fix bail, but was informed that there was none. It was then that she returned to the Veranos and told them that she could not accept the cash bond, and instead, to come back Monday, assuring them that she would give priority to the case.

Atty. Maloloy-on further averred that in the morning of November 14, 2005, an information for Resistance and Disobedience to an Agent of a Person in Authority was filed with their court; that since the rules provide for summary procedure for the offense, she told the Veranos to go to the Executive Judge for interview; that after the interview, the judge issued an order[5] for the Veranos' release, without them posting any bail bond; and that the Veranos were even thankful for her assistance.

Atty. Maloloy-on presented a different version of the incident of November 17, 2005: that Atty. Dela Victoria barged into her office, in a demanding and high-handed manner, inquired why she refused to accept the cash bond; that she told him she was present then and tried to explain her side, but Atty. Dela Victoria kept cutting her short and lectured her on Rule 114, Section 17(c); that when she insisted on explaining, Atty. Dela Victoria arrogantly told her, "You should listen to me. I am a former judge and I know the law better than you do;" that she explained that there was no refusal to accept the bond but merely a failure to post bond because of the absence of an order from the Executive Judge granting bail; that Atty. Dela Victoria stood up, shouted at her, and as he made for the door, he turned around and shouted, "What kind of a Clerk of Court are you? You are ignorant of the law. Bullshit!"

In a letter-reply[6] dated June 17, 2006, Atty. Dela Victoria reiterated that he was able to make arrangements with the Executive Judge regarding his motion to pay cash bond, but Atty. Maloloy-on refused to accept the cash bond purportedly on the ground that she is the only one who can determine the amount of the bond to be deposited before she accepts the same. He said that because of the refusal of Atty. Maloloy-on, the motion to tender the cash bond could not be filed before the Executive Judge for appropriate action.

Atty. Maloloy-on, in her Rejoinder,[7] denied any knowledge of the supposed agreement between Atty. Dela Victoria and the MTCC Executive Judge, as she had not received any advice or instruction, verbal or written, about it. She stated that what was given her on November 12, 2005 was merely a piece of paper on which was scribbled the amount of P2,000.00, and which turned out to be in the handwriting of Atty. Dela Victoria. She also denied the charge that she arrogated unto herself the power of determining the amount of bond to be posted in criminal cases. To support this, she submitted a certification[8] to this effect dated June 28, 2006 executed by MTCC Executive Judge George E. Omelio.

The OCA, in its Report[9] dated July 11, 2006, recommended that the subject administrative complaint against Atty. Maloloy-on be dismissed for lack of merit, finding that she was justified in not accepting the cash bond

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being offered for the temporary release of the Veranos because the guidelines for the application of Rule 114, Sec. 17(c) had not been complied with. The OCA noted that Atty. Dela Victoria failed to substantiate his allegation that he truly filed a motion/petition to fix bail and that the court granted the same. The OCA further recommended that Atty. Dela Victoria be ordered to explain why no disciplinary action should be taken against him for filing a baseless harassment complaint against Atty. Maloloy-on.

In our Resolution[10] of August 16, 2006, we (1) noted the sworn letter-complaint of Atty. Dela Victoria, the comment of Atty. Maloloy-on thereto, and the report of the OCA; (2) dismissed the complaint for lack of merit; and (3) directed Atty. Dela Victoria to explain within ten (10) days from notice why he should not be disciplined as an erring member of the bar for filing his baseless harassment complaint. This directive to Atty. Dela Victoria was reiterated in our October 25, 2006 Resolution.[11]

Atty. Dela Victoria filed by registered mail on October 31, 2006, an undated letter-explanation[12] which merely restated the allegations in his letter-complaint. He also requested that an investigation be conducted to verify the allegations in his complaint. He then filed an undated Compliance,[13] stating that he merely invoked the Rules of Court when he filed his complaint. He reiterated his request for an inquiry and insisted that Atty. Maloloy-on exceeded her authority in arrogantly claiming that she knows the Rules and the law regarding the posting of bail bonds. In support of this, he narrated that Atty. Maloloy-on once refused to accept a petition for execution of a compromise agreement entered before the Lupong Tagapamayapa filed by a patron of his radio program, and instead advised the petitioner to file a complaint before the court to vindicate her rights. It was allegedly only after a lengthy discussion with a regional state prosecutor, a member of the panel of the radio program, that Atty. Maloloy-on acceded to the filing of the petition.

In a letter[14] dated January 24, 2007, Atty. Maloloy-on replied that the additional allegations of Atty. Dela Victoria deserve no explanation because they are irrelevant to the issue, false, misleading, and merely intended to cast a bad image on her person not in accord with legal ethics.

In our Resolution[15] dated February 26, 2007, after noting the letters of both parties, we referred the matter to the OCA for evaluation, report, and recommendation within thirty (30) days from notice.

The OCA, in a Memorandum[16] dated April 11, 2007, found Atty. Dela Victoria's explanation unacceptable and "scant of any consideration." Being a former judge and now a practicing lawyer, he is expected to be fully aware of the requirements before invoking Rule 114, Section 17(c) of the Rules of Court. The OCA found Atty. Maloloy-on to have acted within her authority when she refused to accept the offered cash bonds in the absence of an order from the court granting the same. It also noted that there was no evidence on record to support the allegation that Atty. Dela Victoria really filed the proper motion and that the court allowed it.

For filing a frivolous complaint, the OCA recommended that Atty. Dela Victoria be found guilty of Contempt of Court, meted a fine of P2,000.00, and sternly warned that a repetition of the same offense in the future shall be more severely dealt with. Accordingly, the OCA recommended the denial of his request for an investigation in view of the dismissal of his complaint.

The Court's Ruling

We agree with the OCA.

Considering that he was a former judge and had been engaged in the practice of law for thirty (30) years, Atty. Dela Victoria is expected to be conversant with the scope and application of Rule 114, Section 17(c) of the Rules of Court which he invokes. He should have known that he could not insist on the acceptance of the cash bond in favor of his clients without the necessary order from the court granting his motion to post the same. In fact, his

assertion that he had already made arrangements with the MTCC Executive Judge when there was actually no proper court order amounts to an attempt to mislead Atty. Maloloy-on into processing the unauthorized temporary release of his clients.

Lawyers are required to act with the highest standard of truthfulness, fair play and nobility in the conduct of their litigation and their relations with their clients, the opposing parties, the other counsel and the courts.[17] They are duty bound to avoid improprieties, which give the appearance of influencing the court.[18] Atty. Dela Victoria failed in this regard.

Further, as correctly pointed out by Atty. Maloloy-on and affirmed by the OCA, if Atty. Dela Victoria insists that he filed his motion to fix the amount of bail with the MTCC Executive Judge and the same was granted he should have attached copies of the motion and the Court Order to his complaint. He did not. Furthermore, there is nothing on record that refutes the statement of Atty. Maloloy-on that she inquired from Atty. Villariza, Branch Clerk of Court of the MTCC Executive Judge, and was informed that no petition to fix bail had been filed.

In administrative proceedings, the complainant has the burden of proving by substantial evidence the allegations in his complaint. Mere allegation is not evidence and is not equivalent to proof.[19] Atty. Dela Victoria failed to substantiate this burden. In stark contrast, Atty. Maloloy-on proved truthful her defense when she submitted a copy of the entire court records involving the criminal case against the Veranos,[20] including the certification[21] of Branch Clerk of Court Atty. Villariza that Atty. Dela Victoria did not file any motion to set bail and the certification[22] of the MTCC Executive Judge Omelio that she did not arrogate unto herself, at any time in her capacity as clerk of court, the authority of determining the amount of bail to be posted.

Culled from his very own complaint, it was the failure of Atty. Maloloy-on to apologize to Atty. Dela Victoria that drove him to institute this administrative case, especially after being "lectured" on why she could not accept his tendered cash bond. Obviously, he considered this an affront, given that he is a former judge and has been engaged in the practice of law for three (3) decades. Thus, he filed his complaint for alleged gross ignorance of the law, even without competent evidence to support it.

We cannot overemphasize that a lawyer is part of the machinery in the administration of justice. Like the court itself, he is an instrument to advance its ends - the speedy, efficient, impartial, correct, and inexpensive adjudication of cases and the prompt satisfaction of final judgments. He should not only help attain these objectives but should likewise avoid unethical or improper practices that impede, obstruct, or prevent their realization, charged as he is with the primary task of assisting in the speedy and efficient administration of justice by Canon 12[23] of the Code of Professional Responsibility.[24] Although no person should be penalized for the exercise of the right to litigate, this right must be exercised in good faith. A lawyer who files an unfounded complaint must be sanctioned because as an officer of the court, he does not discharge his duty by filing frivolous petitions that only add to the workload of the judiciary.[25] Such filing of baseless complaints is indeed contemptuous of the courts.[26]

Ordinarily, lawyers who file unfounded complaints are disciplined by imposing upon them a fine in an amount commensurate to the gravity of the offense to be determined by this Court as the disciplining authority.[27] On various occasions, this Court has imposed a fine ranging from P2,000.00 to P5,000.00 for cases similar to the one at bench. In this case, the OCA recommends a fine of P2,000.00. We agree.

As to Atty. Dela Victoria's request for further investigation, the same must be denied, it having become moot under the circumstances.

WHEREFORE, for filing his unfounded complaint against Atty. Maria Fe O. Maloloy-on, Atty. Alfonso L. Dela

Victoria is found guilty of Contempt of Court and is meted a FINE of P2,000.00, with a STERN WARNING that a repetition of the same or similar offense in the future shall be dealt with more severely. For having become moot because of the dismissal of his administrative complaint, the request of Atty. Dela Victoria for an investigation is DENIED.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, and Chico-Nazario, JJ., concur.

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[1] Duduaco v. Laquindanum, A.M. No. MTJ-05-1601, August 11, 2005, 466 SCRA 428, 435; Ong v. Rosete, A.M. No. MTJ-04-1538, October 22, 2004, 441 SCRA 150, 160-161.

[2] Rollo, pp. 1-6.

[3] SEC. 17. x x x (c) Any person in custody who is not yet charged in court may apply for bail with any court in the province, city, or municipality where he is held.

[4] Rollo, pp. 27-32.

[5] Id. at 45.

[6] Id. at 69-70.

[7] Id. at 71-72.
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[8] Id. at 68.

[9] Id. at 101-106.

[10] Id. at 114.

[11] Id. at. 120.

[12] Id. at 127-132.

[13] Id. at 33-135.

[14] Id. at 136.

[15] Id. at 141.

[16] Id. at 142-144.

[17] Ramos v. Pallugna, A.C. No. 5908, October 25, 2004, 441 SCRA 220, 227-228.

[18] Rau Sheng Mao v. Velasco, 459 Phil. 440, 445 (2003).

[19] Nedia v. Laviña, A.M. No. RTJ-05-1957, September 26, 2005, 471 SCRA 10, 20.

[20] Rollo, pp. 73-98.

[21] Id. at 99.

[22] Rollo, p. 68.

[23] CANON 12 - A LAWYER SHALL EXERT EVERY EFFORT AND CONSIDER IT HIS DUTY TO

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[24] Arnado v. Suarin, A.M. No. P-05-2059, August 19, 2005, 467 SCRA 402, 409.

[25] Id. at 408-409.

[26] Rule 71, Section 3. Indirect contempt to be punished after charge and hearing. - x x x

(a) Misbehavior of an officer of a court in the performance of his official duties or in his official transactions.

[27] In Duduaco v. Laquindanum, supra note 1, at 439, the lawyer was fined P10,000.00, while in Arnado v. Suarin, supra note 24, at 410, the fine imposed was P5,000.00.

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