

**ATTY. IRENEO L. TORRES AND MRS. NATIVIDAD CELESTINO,
COMPLAINANTS, VS. ATTY. JOSE CONCEPCION JAVIER,
RESPONDENT.**

ADM. CASE NO. 5910. September 21, 2005

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

By complaint[1] dated November 26, 2002, Atty. Ireneo L. Torres and Mrs. Natividad Celestino (complainants) charge Atty. Jose Concepcion Javier (respondent) for malpractice, gross misconduct in office as an attorney and/or violation of the lawyer's oath.

The charges stemmed from the statements/remarks made by respondent in the pleadings he filed in a petition for audit of all funds of the University of the East Faculty Association (UEFA), as counsel for the therein petitioners UEFA then Treasurer Rosamarie Laman, and his wife-former UEFA President Eleonor Javier, before the Bureau of Labor Relations (BLR), Department of Labor and Employment (DOLE) against herein complainants, docketed as NCR-OD-0105-004-LRD (audit case),[2] and from the pleadings filed by respondent in another labor case as counsel for the one hundred seventy six (176) faculty members of the University of the East complainants against herein complainant Atty. Ireneo L. Torres, et al.,[3] docketed as NCR-OD-0201-0005-LRD (attorney's fees case).[4]

The complaint sets forth three (3) causes of action against respondent.

The first cause of action is based on respondent's "Urgent Motion to Expedite with Manifestation and Reiteration of Position" (Motion to Expedite) filed in the audit case which complainants allege contained statements which are absolutely false, unsubstantiated, and with malicious imputation of crimes of robbery, theft of UEFFA's funds, destruction or concealment of UEFA's documents and some other acts tending to cause dishonor, discredit or contempt upon their persons.[5] Portions of the questioned motion read:

Undersigned attorney would like to manifest – just so it can not be said later on that he kept mum on the matter – that when individual respondents-appellants realized that an audit of Union funds was looming, it appears that they decided to destroy or conceal documents as demonstrated by an "Incident Report Re Robbery" dated May 6, 2002 (a copy just recently secured by the undersigned), attached hereto as Annex "A", where the police investigator stated that "no forcible entry" was noted by him but "that air condition on the respective rooms were (sic) slightly move (sic) to mislead that suspect as the same as their point of entry.["] The police officers stated that "no cash of (sic) money were stolen but instead claimed that still undetermined documents/important papers were stolen by the suspects."

This brings to mind the United States case against Andersen officials who shredded documents related to the Enron scandal when they thought nobody was looking. As in the Andersen/Enron case, the individual respondents-appellants in the instant case knew that the law was going to come knocking at their door, asking a lot [of] questions about financial matters.

From the undersigned's standpoint, the alleged "robbery" of "still undetermined documents/papers" was an inside job as investigation has shown that there is no evidence of forced entry. Besides, it would be a cinch to establish a motive by individual respondents-appellants Torres and Celestino to destroy documents related to the audit ordered by Regional Director Alex E. Maraan. In any event, the undersigned thinks that the legal process should go on. Lumang gimmick na 'yang "robbery" ng mga evidensya . They may try to cover up the "looting" of union funds, but there is such a thing as secondary evidence, not to mention the power of this Honorable Office to issue subpoenas even to the union's depository banks.[6] (Underscoring supplied)

Complainants aver that respondent violated the attorney's oath that he "obey the laws" and "do no falsehood," the Code of Professional Responsibility particularly Rule 10.01 thereof, and Rule 138, specifically paragraph 20 (f) of the Rules of Court for directly pointing to them as the persons who intentionally committed the robbery at the UEFA office, and for citing the Andersen/Enron case which is irrelevant, impertinent, and immaterial to the subject of quasi-judicial inquiry.[7]

As second cause of action, complainants allege that in the attorney's fees case, respondent, in his "Reply to Respondents (Torres and Marquez) Answer/Comment" filed before the DOLE, used language that was clearly abusive, offensive, and improper,[8] inconsistent with the character of an attorney as a quasi-judicial officer.[9]

As third/last cause of action, complainants quote respondent's statement in the aforesaid Reply, to wit:

It is not uncommon for us trial lawyers to hear notaries public asking their sons, wives, girlfriends, nephews, etc. to operate a notarial office and sign for them. These girlfriends, nephews, etc. take affidavits, administer oaths and certify documents. x x x,[10]

and allege that the statement is demeaning to the integrity of the legal profession, "uncalled for and deserve[s] censure, [as] the same might shrink the degree of confidence and trust reposed by the public in the fidelity, honesty and integrity of the legal profession and the solemnity of a notarial document." [11]

By his Comment, respondent candidly professes that he was angry[12] while he was preparing his "Motion to Expedite" in the audit case, it having come to his knowledge that the UEFA office had been burglarized and complainant Atty. Torres had been spreading reports and rumors implicating his clients including his wife to the burglary. [13]

Respondent stresses that he felt that it was his duty to inform the BLR of the loss of the vital documents so that the resolution of the pending motion for reconsideration filed by complainants would be expedited;[14] and that the information regarding the burglary and his use of the Andersen/Enron case as a figure of speech were relevant in drawing a link between the burglary and the audit – the burglary having rendered the complete implementation of the audit unattainable.[15]

With respect to the attorney's fees case, respondent claims that Atty. Torres did not in his Answer confront the issues thereof but instead "mock[ed] his wife and fabricat[ed] and distort[ed] realities"[16] by including malicious, libelous and impertinent statements and accusations against his wife which exasperated him.[17] A portion of Atty. Torres' Answer in the attorney's fees case reads:

x x x in her incumbency as President of the UEFA for 12 years (1987-1999) she got only about P2.00/hr CBA increase which took effect only [in] 1994, with no other substantial improvements of the teacher's benefits, and yet she spent for more than half a million negotiation expenses from the UEFA's funds. Her 1994-1999 CBA was only a carbon copy of her old 1989-1994 CBA with no substantial improvements, with uncertain amount of her expenses, because she removed/concealed all the financial records of the UEFA during her term. . . I and the other lawyers/teachers denounced her unlawful deduction of 10% attorney's fees from the small backwages received by the teachers on April 28, 1993 although there was actually no lawyer who worked for it...and there

was no Board nor General Membership Assembly Resolutions passed...the assembly [Nov. 24, 2001] was apparently irked to Mrs. Eleanor Javier when she was booed while talking on the floor, like a confused gabble (sic)...[18]

Not wanting to allow his wife to be maligned by Atty. Torres, respondent admits having responded with a counter-attack in his "Reply to Respondents (Torres and Marquez) Answer/Comment"[19] wherein he stated:

What kind of a lawyer is this Atty. Torres? The undersigned feels that Atty. Torres just cannot kick the habit of injecting immaterial, irrelevant, and impertinent matters in his pleadings. More than that, he lies through his teeth. The undersigned thinks that if he has any common sense at all he should shut up about his accusation that Prof. Javier spent more than half a million pesos for negotiation expenses...she obtained only P2-increase in union members salary, etc. because of the pendency of the damage suit against him on this score. He easily forgets the sad chapter of his life as a practitioner when he lost out to Prof. Javier in the petition for audit (Case No. NCR-OD-M-9401-004) which he filed to gain "pogi" points prior to the UEFA election in 1994.[20]

x x x

To repeat, if respondent Atty. Torres has any common sense at all, he should stop making irrelevant, libelous and impertinent allegations in his pleadings. This means changing his "standard tactic" of skirting the main issues by injecting a web or a maze of sham, immaterial, impertinent or scandalous matters.[21] (Underscoring supplied)

Respondent adds that he merely wanted to bring to the BLR's attention that Atty. Torres had the habit of hurling baseless accusations against his wife to embarrass her, including one for unjust vexation and another for collection and damages both of which were dismissed after trial on the merits, thus prompting him to state that "these dismissed cases indubitably indicate Atty. Torres' pattern of mental dishonesty." [22] Respondent further claims that in his Answer in the same attorney's fees case, Atty. Torres accused his client, Prof. Maguigad, of forging the signature of a notary public and of "deliberately us[ing] a falsified/expired Community Tax Certificate" in order to justify the dismissal of the case against him (Atty. Torres); [23] and that Atty. Torres continued harassing his clients including his wife by filing baseless complaints for falsification of public document. [24] Hence, in defense of his clients, the following statements in his Reply:

Respondent further concluded that lead petitioner Prof. Maguigad "falsified the said petition by causing it to appear that he participated" in the falsification "when he did not in truth and in fact participate thereat" . . . obviously oblivious of the obvious that it is highly improbable for Prof. Maguigad to have forged the signature of the notary public. If he intended to forge it, what was the big idea of doing so? To save Fifty Pesos (P50.00) for notarial fee? Needless to say, the allegation that lead (sic) petitioner Maguigad used a falsified Com. Tax Cert. is patently unfounded and malicious.

But that is not all. Respondents went further and charged Profs. Mendoza, Espiritu, Ramirez and Javier with the same crime of falsification of public document . . . "by causing it to appear that Rogelio Maguigad had indeed participated in the act of verifying/subscribing and swearing the subject petition before notary public Atty. Jorge M. Ventayen, when in truth and in fact he did not participate thereat."

To the mind of the undersigned, this is the height of irresponsibility, coming as it does from a member of the Philippine Bar. There is no evidence to charge them with falsification of public document, i.e. the "verification" appended to the present petition. They did not even sign it. The crime imputed is clearly bereft of merit. Frankly, the undersigned thinks that even a dim-witted first-year law student would not oblige with such a very serious charge.

It is not uncommon for us trial lawyer[s] to hear notaries public asking their sons, wives, girlfriends, nephews, etc. to "operate" a notarial office and sign for them. These girlfriends, nephews, etc. take affidavits, administer

oaths, and certify documents. Believing that the said "veification" was signed by an impostor-relative of the notary public [Atty. Jorge M. Ventayan] through no fault of his client, Prof. Maguigad, the undersigned sought the assistance of the National Bureau of Investigation (NBI). On May 2, 2002, an NBI agent called up the undersigned to inform him that he arrested in the area near UE one Tancredo E. Ventayen whom he caught in flagrante delicto notarizing an affidavit of loss and feigning to be Atty. Jorge M. Ventayen, supposedly his uncle.[25]

x x x

Petitioners devoted so much space in their answer/comment vainly trying to prove that Profs. Maguigad, Mendoza, Espiritu, Ramirez, and Javier committed the crime of falsification of public document reasoning out that they made "untruthful statements in the narration of facts" in the basic petition.

Respondent Torres is a member of the Philippine Bar. But what law books is he reading?

He should know or ought to know that the allegations in petitioners' pleading are absolutely privileged because the said allegations or statements are relevant to the issues.[26] (Underscoring supplied)

The Investigating Commissioner of the Integrated Bar of the Philippines (IBP) found respondent guilty of violating the Code of Professional Responsibility for using inappropriate and offensive remarks in his pleadings.

The pertinent portions of the Investigating Commissioner's Report and Recommendation read:

Respondent admits that he was angry when he wrote the Manifestation...and alleges that Complainant implicated his wife in a burglary. Moreover, Respondent alleges that Complainant has been "engaged in intimidating and harassing" his wife.

It appears that herein Complainant and herein Respondent's wife have had a series of charges and counter-charges filed against each other. Both parties being protagonists in the intramurals within the University of the East Faculty Association (UEFA). Herein Complainant is the President of the UEFA whereas Respondent's wife was the former President of UEFA. Nevertheless, we shall treat this matter of charges and counter-charges filed, which involved the UEFA, as extraneous, peripheral, if not outright irrelevant to the issue at hand.

x x x

Clearly, [r]espondent's primordial reason for the offensive remark stated in his pleadings was his emotional reaction in view of the fact that herein Complainant was in a legal dispute with his wife. This excuse cannot be sustained. Indeed, the remarks quoted above are offensive and inappropriate. That the Respondent is representing his wife is not at all an excuse.[27] (Underscoring supplied)

Accordingly, the Investigating Commissioner recommended that respondent be reprimanded.

The Board of Governors of the Integrated Bar of the Philippines (IBP), by Resolution[28] of October 7, 2004, adopted and approved the Report and Recommendation of the Investigating Commissioner.

The Report of the IBP faulting respondent is well-taken but not its recommendation to reprimand him.

It is well entrenched in Philippine jurisprudence that for reasons of public policy, utterances made in the course of judicial proceedings, including all kinds of pleadings, petitions and motions, are absolutely privileged so long as they are pertinent and relevant to the subject inquiry, however false or malicious they may be.[29]

The requirements of materiality and relevancy are imposed so that the protection given to individuals in the interest of an efficient administration of justice may not be abused as a cloak from beneath which private malice may be gratified.[30] If the pleader goes beyond the requirements of the statute and alleges an irrelevant matter

which is libelous, he loses his privilege.[31]

A matter, however, to which the privilege does not extend must be so palpably wanting in relation to the subject matter of the controversy that no reasonable man can doubt its irrelevancy or impropriety.[32] That matter alleged in a pleading need not be in every case material to the issues presented by the pleadings. It must, however, be legitimately related thereto, or so pertinent to the subject of the controversy that it may become the subject of inquiry in the course of the trial.[33]

The first cause of action of complainants is based on respondent's allegation in his "Motion to Expedite" that a burglary of the UEFA office took place, and his imputation to complainants of a plausible motive for carrying out the burglary – the concealment and destruction of vital documents relating to the audit. The imputation may be false but it could indeed possibly prompt the BLR to speed up the resolution of the audit case. In that light, this Court finds that the first cause of action may not lie.

As regards the second cause of action, it appears that respondent was irked by Atty. Torres' Answer to the complaint in the attorney's fees case wherein he criticized his (respondent's) wife's performance as past President of UEFA.

This Court does not countenance Atty. Torres' incorporating in his Answer in the attorney's fees case statements such as "the assembly . . . was apparently irked by Mrs. Eleonor Javier when she was booed while talking on the floor like a confused gabble (sic)." But neither does it countenance respondent's retaliating statements like "what kind of lawyer is Atty. Torres?," "he lies through his teeth," "if he has any common sense at all he should shut up," and "Atty. Torres forgets the sad chapter of his life as a practitioner when he lost out to Prof. Javier in the petition for audit which he filed to gain pogi points." Nor respondent's emphasis that Atty. Torres is of the habit of hurling baseless accusations against his wife by stating that the dismissal of the cases against his wife, of which Atty. Torres was the complainant, "indubitably indicate Atty. Torres' pattern of mental dishonesty."

The issue in the attorney's fees case was whether the 10% attorney's fees "checked off" from the initial backwages/salaries of UEFA members is legal. Clearly, the above-quoted statements of respondent in the immediately preceding paragraph cannot be said to be relevant or pertinent to the issue. That Atty. Torres may have conducted himself improperly is not a justification for respondent to be relieved from observing professional conduct in his relations with Atty. Torres.

Clients, not lawyers, are the litigants, so whatever may be the ill-feeling existing between clients should not be allowed to influence counsel in their conduct toward each other or toward suitors in the case.[34]

In the attorney's fees case, Atty. Torres was acting as counsel for himself as respondent and complainant was acting as counsel for his wife as complainant. Although it is understandable, if not justifiable, that in the defense of one's clients - especially of one's wife or of one's self, the zeal in so doing may be carried out to the point of undue skepticism and doubts as to the motives of opposing counsel, the spectacle presented by two members of the bar engaged in bickering and recrimination is far from edifying, and detract from the dignity of the legal profession.[35]

Moreover, in arguing against the dismissal of the attorney's fees case on the basis of the alleged forgery of the notary public's signature, respondent did not only endeavor to point out that Atty. Torres erred in advancing such an argument, but personally attacked Atty. Torres' mental fitness by stating that "the undersigned thinks that even a dim-witted first-year law student would not oblige with such a very serious charge," and "[r]espondent Torres is a member of the bar [b]ut what law books is he reading."

In keeping with the dignity of the legal profession, a lawyer's language must be dignified and choice of language

is important in the preparation of pleadings.[36] In the assertion of his client's rights, a lawyer – even one gifted with superior intellect – is enjoined to rein up his temper.[37]

As reflected above, the inclusion of the derogatory statements by respondent was actuated by his giving vent to his ill-feelings towards Atty. Torres, a purpose to which the mantle of absolute immunity does not extend. Personal colloquies between counsel which cause delay and promote unseemly wrangling should be carefully avoided.[38]

If indeed Atty. Torres filed criminal complaints for falsification of public documents against respondent's clients as a scheme to harass them, they are not without adequate recourse in law, for if they plead for a righteous cause, the course of justice will surely tilt in their favor, the courts being ever vigilant in the protection of a party's rights.[39]

Canon 8 of the Code of Professional Responsibility which provides:

CANON 8 – A LAWYER SHALL CONDUCT HIMSELF WITH COURTESY, FAIRNESS AND CANDOR TOWARD HIS PROFESSIONAL COLLEAGUES, AND SHALL AVOID HARASSING TACTICS AGAINST OPPOSING COUNSEL.

Rule 8.01. A lawyer shall not, in professional dealings, use language which is abusive, offensive or otherwise improper.

instructs that respondent's arguments in his pleadings should be gracious to both the court and opposing counsel and be of such words as may be properly addressed by one gentleman to another.[40] The language vehicle does not run short of expressions which are emphatic but respectful, convincing but not derogatory, illuminating but not offensive.[41]

As to the reference by respondent to the unfortunate and contemptible practice of notaries public – basis of the last cause of action, while it may detract from the dignity that should characterize the legal profession and the solemnity of a notarial document, respondent, who justifies the same as legitimate defense of his client who was being accused by Atty. Torres of forgery, may, given the relevance of the statement to the subject matter of the pleading, be given the benefit of the doubt.

Respecting the verified complaint – Annex "EJ-A"[42] to the Comment of respondent filed by his wife, Prof. Eleonor R. Javier, against complainant Atty. Torres, the same cannot be consolidated with the present administrative case since the parties and causes of action of such complaint are completely different from those of the present complaint.

WHEREFORE, for employing offensive and improper language in his pleadings, respondent Atty. Jose C. Javier is hereby **SUSPENDED** from the practice of law for One (1) Month, effective upon receipt of this Decision, and is **STERNLY WARNED** that any future infraction of a similar nature shall be dealt with more severely.

Let copies of this Decision be furnished the Office of the Bar Confidant, the Integrated Bar of the Philippines, and all courts in the country for their information and guidance.

SO ORDERED.

Panganiban, J., Chairman, Sandoval-Gutierrez, Corona, and Garcia, JJ., concur.

[1] Rollo at 1-13.

- [2] Id. at 2.
- [3] Id. at 55-56.
- [4] Id. at 2.
- [5] Id. at 5.
- [6] Id. at 17-18.
- [7] Id. at 7.
- [8] Id. at 8.
- [9] Id. at 9.
- [10] Id. at 29.
- [11] Id. at 11.
- [12] Id. at 59.
- [13] Id. at 71.
- [14] Id. at 74-75.
- [15] Id. at 79.
- [16] Id. at 64.
- [17] Id. at 89.
- [18] Id. at 87.
- [19] Id. at 64.
- [20] Id. at 38.
- [21] Id. at 40.
- [22] Id. at 39.
- [23] Id. at 81.
- [24] Id. at 83-85.
- [25] Id. at 146-147.
- [26] Id. at 33.
- [27] Id. at 532-533.
- [28] Id. at 529.
- [29] Gutierrez v. Abila, 111 SCRA 658, 663 (1982).
- [30] Ibid.
- [31] Ibid.
- [32] Tolentino v. Baylosis, 1 SCRA 396, 400 (1961).

[33] Ibid.

[34] *People v. Sesbreno*, 130 SCRA 465, 470 (1984).

[35] *Id.* at 469-470.

[36] *Id.* at 470.

[37] Ibid.

[38] Ibid.

[39] *Gutierrez v. Abila*, 111 SCRA 658, 664 (1982).

[40] *Hueysuwan-Florido v. Florido*, 420 SCRA 132, 137 (2004).

[41] *Rheem of the Philippines vs. Ferrer*, 20 SCRA 441, 445 (1967).

[42] *Rollo* at 196-200.

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