

NOEMI ARANDIA, COMPLAINANT, VS. ATTY. ERMANDO MAGALONG, RESPONDENT.

Adm. Case No. 5094. August 06, 2002

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

On July 16, 1999, complainant Noemi Arandia filed with this Court a complaint-affidavit charging respondent Atty. Ermando Magalong of violating the Code of Professional Responsibility for making threats against her and her husband in connection with complainant's alleged debts to his client.[1]

Complainant alleged that on August 26, 1997, she was summoned by respondent to his office, where he threatened her that he would have her and her husband arrested if they did not make good the checks they gave to respondent's client, Jonelyn Bastareche. Complainant averred that respondent's actuations surprised her, since she was not aware of any outstanding indebtedness on her or her husband's part in favor of Ms. Bastareche. On September 15, 1997, complainant received from respondent's secretary respondent's August 26, 1997 letter addressed to a certain "SPO2 Bautista/warrant officer" requesting that the issuance of the warrant of arrest against complainant and her husband be held in abeyance pending the ongoing negotiations between them and his clients, the Bastareche spouses. [2]

For fear that she and her husband would indeed be arrested by the police, complainant obeyed respondent's instructions to her and signed a document captioned Malinawong Kasabutan (Amicable Settlement) before the Lupong Tagapamayapa of their barangay. Subsequently, when she verified from the trial court whether there was a pending warrant of arrest against her, complainant discovered that no such warrant was issued by the court.

In his Comment, respondent claimed that complainant had an existing obligation to pay his client, Jonelyn Bastareche, Two Hundred Thousand Pesos (P200,000.00), the amount corresponding to the two bouncing checks which she had earlier rediscounted to Bastareche. Respondent contended that after Bastareche's and respondent's efforts to collect the said amount from complainant failed, they decided to file a criminal case for violation of Batas Pambansa Blg. 22. He instructed his client to go to the police investigator and file a sworn complaint against complainant.[3]

Respondent said that he was not able to talk to Bastareche for about a week after he instructed her to file the complaint. He further alleged that on August 26, 1997, complainant went to his office and submitted a proposal to settle the dispute between her and Bastareche. Respondent informed complainant that about a week ago, he ordered Bastareche to file a complaint against her (complainant). Upon hearing this, complainant insisted that her proposal be relayed immediately to Bastareche, and that the warrant of arrest against her, if such had already been issued, be held in abeyance. Believing that Bastareche had already filed a complaint against complainant, respondent wrote the letter addressed to "SPO2 Bautista/warrant officer" requesting that the issuance of the warrant of arrest be held in abeyance.[4]

On October 25, 1999, the Court referred the case to the Integrated Bar of the Philippines (IBP) for investigation,

report and recommendation.[5]

In a letter dated March 20, 2000, the Atty. Victor C. Fernandez, IBP Director for Bar Discipline, submitted to the Court a Notice of Resolution and the Records of the case consisting of 26 pages. The Resolution of the Board of Governors, adopting the recommendation of the investigating commissioner, Commissioner Victor C. Fernandez, states:

IBP Resolution No. XIV-2000-23

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RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution/Decision as Annex "A", and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, the case against Respondent is DISMISSED for lack of merit.

Complainant filed a Motion for Reconsideration of the IBP's resolution. She alleged that she was not furnished a copy of said resolution and that it was respondent who gave her a copy thereof. Complainant further claimed that she did not receive a copy of the Answer filed by respondent with the IBP.

On August 16, 2000, the Court required respondent to comment on complainant's motion.

On September 16, 2000, respondent filed his Comment and Manifestation whereby he informed the Court that he was adopting the Comment which he submitted to the Investigating Commissioner of the IBP on September 28, 1999.

It appears that the report and recommendation of the IBP was based merely on the Original Rollo of the case which was sent by the Court to the IBP pursuant to its October 25, 1999 resolution. No hearing was conducted to determine the veracity of complainant's and respondent's respective allegations.

In *Baldomar vs. Paras*,[6] the Court held:

Complaints against lawyers for misconduct are normally addressed to the Court. If, at the outset, the Court finds a complaint to be clearly wanting in merit, it outrightly dismisses the case. If, however, the Court deems it necessary that further inquiry should be made, such as when the matter could not be resolved by merely evaluating the pleadings submitted, a referral is made to the IBP for a formal investigation of the case during which the parties are accorded an opportunity to be heard. An *ex parte* investigation may only be conducted when respondent fails to appear despite reasonable notice. xxx[7] (Emphasis supplied.)

It must be emphasized that a formal investigation is a mandatory requirement which may not be dispensed with except for valid and compelling reasons.[8] Thus, Rule 139-B of the Revised Rules of Court which outlines the procedure for disbarment and disciplinary cases against members of the Bar, directs an investigator or a panel of investigators appointed as such by the IBP Board of Governors to investigate all complaints referred by said body to him, or to the panel, as the case may be.[9] In conducting an investigation, the investigator or investigating panel must comply with the following:

Sec. 5. Service or dismissal. – If the complaint appears to be meritorious, the Investigator shall direct that a copy thereof be served upon the respondent, requiring him to answer the same within fifteen (15) days from the date of service. If the complaint does not merit action, or if the answer shows to the satisfaction of the Investigator that the complaint is not meritorious, the same may be dismissed by the Board of Governors upon his recommendation. A copy of the resolution of dismissal shall be furnished the complainant and the Supreme

Court which may review the case *motu proprio* or upon timely appeal of the complainant filed within 15 days from notice of the dismissal of the complaint.

“No investigation shall be interrupted or terminated by reason of the desistance, settlement, compromise, restitution, withdrawal of the charges, or failure of the complainant to prosecute the same.

“xxx

“Sec. 8. Investigation.—Upon joinder of issues or upon failure of the respondent to answer, the Investigator shall, with deliberate speed, proceed with the investigation of the case. He shall have the power to issue subpoenas and administer oaths. The respondent shall be given full opportunity to defend himself, to present witnesses on his behalf and be heard by himself and counsel. However, if upon reasonable notice, the respondent fails to appear, the investigation shall proceed *ex parte*.

The Investigator shall terminate the investigation within three (3) months from the date of its commencement, unless extended for good cause by the Board of Governors upon prior application.

Willful failure or refusal to obey a subpoena or any other lawful order issued by the Investigator shall be dealt with as for indirect contempt of Court. The corresponding charge shall be filed by the Investigator before the IBP Board of Governors which shall require the alleged contemnor to show cause within ten (10) days from notice. The IBP Board of Governors may thereafter conduct hearings, if necessary, in accordance with the procedure set forth in this Rule for hearings before the Investigator. Such hearing shall as far as practicable be terminated within fifteen (15) days from its commencement. Thereafter, the IBP Board of Governors shall within a period of fifteen (15) days issue a resolution setting forth its findings and recommendations, which shall forthwith be transmitted to the Supreme Court for final action and if warranted, the imposition of penalty.

The Court finds that the conduct of a formal investigation is necessary for the proper resolution of the instant case.

WHEREFORE, the instant administrative case is hereby REMANDED to the Integrated Bar of the Philippines for further proceedings.

SO ORDERED.

Davide, Jr., C. J., (Chairman), Vitug, Ynares-Santiago, and Austria-Martinez, JJ., concur.

[1] Affidavit-Complaint, Rollo, p. 7.

[2] *Id.*, at 8.

[3] Comment, *Id.*, at 13-14.

[4] *Id.*, at 14.

[5] Resolution of the Court’s First Division dated October 25, 1999, Rollo, p 26.

[6] 348 SCRA 212 (2000).

[7] *Id.*, at 215, citing *Cottam vs. Atty. Laysa*, 326 SCRA 614 (2000).

[8] *Id.*, at 216.

[9] Section 3.

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