SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

ROMULO DE MESA FESTIN, Complainant,	**A.C. No. 11600**
- versus -	Present:
ATTY. ROLANDO V. ZUBIRI, Respondent.	SERENO, *C.J.*, LEONARDO-DE CASTRO, DEL CASTILLO, PERLAS-BERNABE, CAGUIOA, *JJ.*
	Promulgated: JUN 19 2017

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D E C I S I O N

PERLAS-BERNABE, *J.*:

This administrative case stemmed from an affidavit-complaint[1] filed by complainant Romulo De Mesa Festin (complainant) against respondent Atty. Rolando V. Zubiri (respondent) before the Integrated Bar of the Philippines (IBP) for gross violations of the Code of Professional Responsibility (CPR).

The Facts

Complainant alleged that he was elected as Mayor of the Municipality of San Jose, Occidental Mindoro in the May 2013 elections. His opponent, Jose Tapales Villarosa (Villarosa), filed an election protest against him before the Regional Trial Court of San Jose, Occidental Mindoro, Branch 46

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[1] *Rollo*, pp. 2-13.

(RTC).[2] After deciding in favor of Villarosa, the RTC issued an Order[3] dated January 15, 2014 (January 15, 2014 Order), granting his motion for execution pending appeal, *viz.*:

> WHEREFORE, the Motion for Execution Pending Appeal is GRANTED.
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> The OIC-Branch Clerk of Court [(COC)] is hereby directed to issue a Writ of Execution Pending Appeal **after the lapse of twenty (20) working days** to be counted from the time [complainant's] counsel receives a copy of this Special Order, **if no restraining order or status quo order is issued** pursuant to Section 11 (b),[4] Rule 14 of A.M. No. 07-4-15-SC.[5] (Emphasis supplied)

Distressed, complainant filed a petition for *certiorari*[6] before the Commission on Elections (COMELEC), seeking a Temporary Restraining Order (TRO) against the issuance of the writ of execution pending appeal.[7] In an Order[8] dated February 13, 2014, the COMELEC issued a TRO, directing Hon. Gay Marie F. Lubigan-Rafael (RTC Judge), in her official capacity as Presiding Judge of the RTC, to cease and desist from enforcing the January 15, 2014 Order, effective immediately.[9] Accordingly, the RTC issued another Order[10] dated February 25, 2014 (February 25, 2014 Order), pertinent portion of which reads:

> In view thereof, the OIC-Branch [COC] is directed **NOT TO ISSUE** a Writ of Execution in accordance with the [January 15, 2014] Order until further notice.[11]

Despite the TRO and the RTC's February 25, 2014 Order, respondent, as counsel of Villarosa, filed five (5) manifestations[12] addressed to the COC

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2 See id. at 5-6.

3 Id. at 14-16. Penned by Presiding Judge Gay Marie F. Lubigan-Rafael.

4 Section 11 (b), Rule 14 of A.M. No. 07-4-15-SC states:

> Section 11. Execution pending appeal. – x x x.
>
> (b) If the court grants an execution pending appeal, an aggrieved party shall have twenty working days from notice of the special order within which to secure a restraining order or status quo order from the Supreme Court or the Commission on Elections. The corresponding writ of execution shall issue after twenty days, if no restraining order or status quo order is issued. During such period, the writ of execution pending appeal shall be stayed. (Underscoring supplied)

5 *Rollo*, p. 15

6 See Petition for *Certiorari* (with a Most Urgent Prayer for the Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order) dated January 31, 2014; id. at 17-63.

7 See id. at 61.

8 Id. at 66-67. Signed by Presiding Commissioner Lucenito N. Tagle.

9 See id. at 66.

10 Id. at 68-69.

11 Id. at 68.

12 See Urgent Ex-Parte Manifestation dated February 12, 2014 (id. at 70-72, pages are inadvertently misarranged); undated 2nd Urgent Ex-Parte Manifestation (id. at 75-76); 3rd Urgent Manifestation dated February 18, 2014 (id. at 79-80); 4th Very Urgent Ex-Parte Manifestation/ Rejoinder dated February 24, 2014 (id. at 81-84, pages are inadvertently misarranged); and 5th Very Urgent Ex-Parte Manifestation dated February 12, 2014 (id. at 85-87).

insisting on the writ's issuance. Notably, he did not serve copies of these manifestations to the other party.[13]

In these manifestations, respondent claimed that his client received the RTC's January 15, 2014 Order on January 18, 2014, and counting from said date, the twenty-day period ended on February 12, 2014.[14] Since the COMELEC only issued the TRO on February 13, 2014, the TRO no longer had any effect. Respondent further asserted that the TRO was addressed only to the RTC Judge, and not to the COC; therefore, the COC is not bound by the TRO. For these reasons, respondent insisted that the COC could legally issue the writ of execution pending appeal.[15]

The COC eventually issued a Writ of Execution Pending Appeal addressed to the sheriff. However, complainant only found out about respondent's manifestations when the sheriff attempted to serve the writ on him.[16] Soon thereafter, complainant filed the disbarment complaint.

In his complaint, complainant argued that respondent violated his ethical duties when he misled and induced the COC to defy lawful orders – particularly, the COMELEC's TRO and the RTC's February 25, 2014 Order.[17] As a result, respondent allegedly violated Canons 1, 10, 15, and 19 of the CPR.[18]

In his answer,[19] respondent claimed that, *first,* since the case records had been transmitted to the COMELEC on January 31, 2014, the RTC was divested of jurisdiction over the case; therefore, it had no more power to issue the February 25, 2014 Order.[20] Respondent put forward the same reason for filing the five manifestations with the COC instead of the RTC Judge.[21] *Second,* the manifestations contained no misleading statements or factual deviations. He merely stated in his manifestations his honest belief that the twenty-day period had already lapsed when the COMELEC issued its TRO; hence, it no longer had any binding effect. He explained that the filing of manifestations to highlight his position did not violate any rule.[22] *Third,* he allegedly filed those manifestations pursuant to his duty under Canon 18 of the CPR to represent his client with competence and diligence.[23]

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13 See id. at 7.
14 Respondent alleged that based on Administrative Circular No. 2-99 dated January 15, 1999, all RTC Executive Judges shall remain on duty on Saturday mornings. See id. at 72.
15 See id. at 75-76, 79-80, 81-84, and 85-87.
16 See id. at 6-7.
17 See id. at 8-9.
18 See id. at 3-4 and 9-12.
19 Dated June 30, 2014. Id. at 109-124.
20 See id. at 112-113.
21 See id. at 115.
22 See id. at 115-119.
23 See id. 119-122.

The IBP's Report and Recommendation

In a Report and Recommendation[24] dated September 1, 2014, the Investigating Commissioner recommended that respondent be suspended from the practice of law for six (6) months.[25] He observed that by filing manifestations instead of motions, respondent was able to disregard the rule that motions shall be served on the other party and shall contain a notice of hearing. In this regard, the Investigating Commissioner noted that a manifestation merely informs the court about a certain matter involving the case, and does not require affirmative action by the court. In the present case, however, the manifestations filed by respondent were actually motions as these contained arguments to support his prayer for the issuance of a writ of execution pending appeal. Moreover, the Investigating Commissioner also held that respondent acted in bad faith when he convinced the COC to disregard the COMELEC's TRO. He pointed out that when the TRO enjoins the court, it includes the judge and all officers and employees of the court, including the clerk of court. Hence, respondent was unfair to the other party and employed deceit when he filed the manifestations. As a result, the other party was not afforded due process by being deprived of an opportunity to oppose the manifestations.[26]

In a Resolution[27] dated December 14, 2014, the IBP Board of Governors (IBP Board) adopted and approved the Report and Recommendation of the Investigation Commissioner.

Respondent moved for reconsideration,[28] which was, however, denied in a Resolution[29] dated May 28, 2016.

On October 10, 2016, respondent filed a petition for review[30] before the Court purportedly pursuant to the procedure laid out in *Ramientas v. Reyala* (*Ramientas*).[31]

The Issue Before the Court

The core issue in this case is whether or not respondent should be held administratively liable for the acts complained of.

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24 Id. at 234-235. Signed by Commissioner Arsenio P. Adriano.
25 Id. at 235.
26 See id. at 234-235.
27 See Notice of Resolution in Resolution No. XXI-2014-933 signed by National Secretary Nasser A. Marohomsalic; id. at 233, including dorsal portion.
28 See motion for reconsideration dated October 12, 2015; id. at 236-251.
29 See Notice of Resolution in Resolution No. XXII-2016-318 signed by National Secretary Patricia Ann T. Prodigalidad; id. at 281-282.
30 Dated October 5, 2016. Id. at 287-308.
31 529 Phil. 128 (2006).

The Court's Ruling

I.

At the outset, the Court deems it proper to clarify that respondent's filing of the instant petition for review does not conform with the standing procedure for the investigation of administrative complaints against lawyers.

Section 12 (b) and (c) of Rule 139-B of the Rules of Court, as amended by Bar Matter No. 1645 dated October 13, 2015,[32] states:

> Section 12. *Review and* ***Recommendation*** *by the Board of Governors.* –
>
> x x x x
>
> b) After its review, the Board, by the vote of a majority of its total membership, shall **recommend** to the Supreme Court the dismissal of the complaint or the imposition of disciplinary action against the respondent. The Board shall issue a resolution setting forth its findings and recommendations, clearly and distinctly stating the facts and the reasons on which it is based. The resolution shall be issued within a period not exceeding thirty (30) days from the next meeting of the Board following the submission of the Investigator's report.
>
> c) **The Board's resolution, together with the entire records and all evidence presented and submitted**, shall be **transmitted to the Supreme Court for final action** within ten (10) days from issuance of the resolution.
>
> x x x x (Emphases supplied)

Under the old rule, the IBP Board had the power to "issue a decision" if the lawyer complained of was either exonerated or meted a penalty of "less than suspension of disbarment." In this situation, the case would be deemed terminated unless an interested party files a petition before the Court.[33] The case of *Ramientas*,[34] which was cited as respondent's basis for filing the present petition for review, was pronounced based on the old rule.[35]

In contrast, under the amended provisions cited above, the IBP Board's resolution is merely recommendatory regardless of the penalty imposed on the lawyer. The amendment stresses the Court's authority to discipline a lawyer who transgresses his ethical duties under the CPR.

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32 "Re: Amendment of Rule 139-B" dated October 13, 2015.

33 *Vasco-Tamaray v. Daquis,* A.C. No. 10868, January 26, 2016, 782 SCRA 44, 64-65.

34 See supra note 31, at 131-136.

35 The Court notes that even under the old rule, respondent's petition for review was an improper pleading – if not a mere surplusage - considering that the IBP Board's recommended penalty against him was not "less than suspension" and would thus not trigger the application of the then Section 12(c) of Rule 139-B of the Rules of Court.

Hence, any final action on a lawyer's administrative liability shall be done by the Court based on the entire records of the case, including the IBP Board's recommendation, without need for the lawyer-respondent to file any additional pleading.

On this score, respondent's filing of the present petition for review is unnecessary. Pursuant to the current rule, the IBP Board's resolution and the case records were forwarded to the Court. The latter is then bound to fully consider all documents contained therein, regardless of any further pleading filed by any party - including respondent's petition for review, which the Court shall nonetheless consider if only to completely resolve the merits of this case and determine respondent's actual administrative liability.

II.

After a judicious review of the case records, the Court agrees with the IBP that respondent should be held administratively liable for his violations of the CPR. However, the Court finds it proper to impose a lower penalty.

Canon 1 of the CPR mandates lawyers to uphold the Constitution and promote respect for the legal processes.[36] Additionally, Canon 8 and Rule 10.03, Canon 10 of the CPR require lawyers to conduct themselves with fairness towards their professional colleagues, to observe procedural rules, and not to misuse them to defeat the ends of justice. These provisions read thus:

> CANON 1 – A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAW OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCESSES.
>
> x x x x
>
> CANON 8 – A LAWYER SHALL CONDUCT HIMSELF WITH COURTESY, FAIRNESS AND CANDOR TOWARDS HIS PROFESSIONAL COLLEAGUES, AND SHALL AVOID HARASSING TACTICS AGAINST OPPOSING COUNSEL.
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> x x x x
>
> CANON 10 – A LAWYER OWES CANDOR, FAIRNESS AND GOOD FAITH TO THE COURT.
>
> x x x x
>
> Rule 10.03 – A lawyer shall observe the rules of procedure and shall not misuse them to defeat the ends of justice.

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[36] *Office of the Court Administrator v. Liangco*, 678 Phil. 305, 321 (2011).

Contrary to these edicts, respondent improperly filed the five (5) motions as "manifestations" to sidestep the requirement of notice of hearing for motions. In effect, he violated his professional obligations to respect and observe procedural rules, not to misuse the rules to cause injustice, and to exhibit fairness towards his professional colleagues.

The difference between a manifestation and a motion is essential in determining respondent's administrative liability.

A manifestation is usually made merely for the information of the court, unless otherwise indicated. In a manifestation, the manifesting party makes a statement to inform the court, rather than to contest or argue.[37] In contrast, a motion is an application for relief from the court other than by a pleading[38] and must be accompanied by a notice of hearing and proof of service to the other party, unless the motion is not prejudicial to the rights of the adverse party.[39] Settled is the rule that a motion without notice of hearing is *pro forma* or a mere scrap of paper; thus, the court has no reason to consider it and the clerk has no right to receive it. The reason for the rule is simple: to afford an opportunity for the other party to agree or object to the motion before the court resolves it. This is in keeping with the principle of due process.[40]

In the present case, respondent filed five (5) manifestations before the COC praying for affirmative reliefs. The Court agrees with the IBP that these "manifestations" were in fact motions, since reliefs were prayed for from the court – particularly, the issuance of the writ of execution pending appeal. By labelling them as manifestations, respondent craftily sidestepped the requirement of a notice of hearing and deprived the other party of an opportunity to oppose his arguments. Moreover, the fact that he submitted these manifestations directly to COC, instead of properly filing them before the RTC, highlights his failure to exhibit fairness towards the other party by keeping the latter completely unaware of his manifestations. Undoubtedly, respondent violated his professional obligations under the CPR.

He attempts to justify his acts by arguing that he merely represented his client with competence and diligence. However, respondent should be reminded that a lawyer is ethically bound not only to serve his client but also the court, his colleagues, and society. His obligation to represent his client is

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37 See *Neri v. de la Peña*, 497 Phil. 73, 81 (2005).

38 RULES OF COURT, Rule 15, Sec. 1.

39 RULES OF COURT, Rule 15, Sec. 4.

40 See *Boiser v. Aguirre, Jr.*, 497 Phil. 728, 734-735 (2005); and *Neri v. dela Peña*, supra note 36, at 80-81. In *Boiser v. Aguirre*, a judge was found administratively liable for gross ignorance of the law for granting a motion filed without the requisite notice of hearing and proof of service. In *Neri v. dela Peña*, a judge was found liable for acting on an *ex parte* manifestation and basing his decision on it while the other party was completely unaware of the manifestation's existence. The Court held that the judge's act seriously ran afoul of the precepts of fair play.

not without limits, but must be "within the bounds of the law" pursuant to Canon 19 of the CPR. Accordingly, he is ethically bound to employ only fair and honest means to attain their clients' objectives.

Respondent further argues that his filing of the manifestations with the COC is justified considering that the RTC had already lost jurisdiction over the case and the COC had the ministerial duty to issue the writ of execution. His argument fails to persuade. The Court has ruled that a COC has a ministerial duty to issue a writ of execution when the judge directs its issuance.[41] In this case, however, the RTC Judge had issued the second Order (dated February 25, 2014) explicitly directing the COC "NOT TO ISSUE a Writ of Execution." Therefore, the COC in this case did not have a ministerial duty to issue the writ of execution. If respondent honestly believed that his client was entitled to the writ, then he should not have clandestinely submitted *ex parte* manifestations directly to the COC to coerce the latter to grant his intended relief. Instead, respondent should have filed the proper motions before the court, which alone has the inherent power to grant his prayer pursuant to Section 5 (c), (d), and (g), Rule 135 of the Rules of Court.[42]

The Court has the plenary power to discipline erring lawyers. In the exercise of its sound judicial discretion, it may to impose a less severe punishment if such penalty would achieve the desired end of reforming the errant lawyer.[43] In light of the foregoing discussion, the Court deems that a penalty of suspension from the practice of law for three (3) months is sufficient and commensurate with respondent's infractions.[44]

As a final note, the Court stresses that a lawyer's primary duty is to assist the courts in the administration of justice. Any conduct that tends to delay, impede, or obstruct the administration of justice contravenes this obligation.[45] Indeed, a lawyer must champion his client's cause with competence and diligence, but he cannot invoke this as an excuse for his failure to exhibit courtesy and fairness to his fellow lawyers and to respect legal processes designed to afford due process to all stakeholders.

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41 See *City of Naga v. Asuncion*, 579 Phil. 781, 801-802 (2008).

42 Section 5 (c), (d), and (g), rule 135 of the Rules of Court provide:

> Section 5. *Inherent powers of courts.* – Every court shall have power:
>
> x x x x
>
> (c) To compel obedience to its judgments, orders and processes, and to the lawful orders of a judge out of court, in a case pending therein;
>
> (d) To control, in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a case before it, in every manner appertaining thereto;
>
> x x x x
>
> (g) To amend and control its process and orders so as to make them conformable to law and justice;
>
> x x x x

43 See *Foronda v. Alvarez, Jr.*, 737 Phil. 1, 13 (2014).

44 See *Ramos v. Pallugna*, 484 Phil. 184, 193 (2004).

45 *Teodoro III v. Gonzales*, 702 Phil. 422, 431 (2013).

WHEREFORE, respondent Atty. Rolando V. Zubiri (respondent) is found **GUILTY** of violating Canon 1, Canon 8, and Rule 10.03, Canon 10 of the Code of Professional Responsibility. Accordingly, he is **SUSPENDED** from the practice of law for three (3) months effective from the finality of this Decision, and is **STERNLY WARNED** that a repetition of the same or similar act shall be dealt with more severely.

Let a copy of this Decision be furnished to the Office of the Bar Confidant, to be attached to respondent's personal record as a member of the Bar. Furthermore, let copies of the same be served on the Integrated Bar of the Philippines and the Office of the Court Administrator, which is directed to circulate them to all courts in the country for their information and guidance.

SO ORDERED.

ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice