Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

ATTY. PEDRO B. AGUIRRE,
Complainant,

-versus-

ATTY. CRISPIN T. REYES,
Respondent.

A.C. No. 4355

Present:

PERALTA, *C.J., Chairperson*
CAGUIOA,
REYES, J.C., JR.,
LAZARO-JAVIER, and
LOPEZ,* *JJ.*

Promulgated:

JAN 08 2020

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DECISION

LAZARO-JAVIER, *J.*:

The Case

Almost a quarter of century ago, complainant Atty. Pedro B. Aguirre charged respondent Atty. Crispin T. Reyes with multiple violations of the Code of Professional Responsibility (CPR), *i.e.* Rule 3.01, Rule 8.01 in relation to Rule 19.01, and Rule 10.03 in relation to Rule 12.02.

* On official leave.

Antecedents

Atty. Aguirre's Complaint[1] dated December 1, 1994

Atty. Aguirre essentially stated:

Atty. Reyes violated Rule 3.01[2] by making false claims in his memo[3] dated December 20, 1993 addressed to the Board of Directors of Banco Filipino, which partly reads:

x x x

> (5) Undersigned counsel was also mainly instrumental in winning the Supreme Court case (GR 70054) to reopen BF. He also made "a special arrangement" that is quite confidential which should not be divulged to "small men" like Mr. Gatmaitan. His Memo of Feb. 8, 1991, Aide Memoire of March 24, 1991 etc addressed to Don Tomas B. Aguirre attest to his modest but effectively fruitful professional services.

x x x

These false statements, *i.e.*, that he was "*instrumental in winning the Supreme Court case*" and he made "*special arrangements*" put the Supreme Court in a bad light. They amounted to "*false, fraudulent, misleading, deceptive, undignified, self-laudatory or unfair statement or claim regarding his qualifications or legal services*."

Atty. Reyes also violated Rule 8.01[4] in relation to Rule 19.01[5] when he drafted the following: 1) confidential/restricted memo[6] dated March 28, 1994 addressed to all Banco Filipino directors and executive officers; and 2) Amended Complaint[7] dated May 10, 1994 in SEC Case No. 04-94-4750 entitled "*Eduardo Rodriguez, et al v. Tala Realty Services Corp., et al.*" He wrote the same on behalf of the minority stockholders of Banco Filipino and addressed it to all concerned individuals at Tala Realty Corporation. He stated:

x x x

> 11. Truly, we have here the biggest bank fraud involving over P1 Billion of Banco Filipino properties sold by simulated contracts to Tala controlled by parties who were then BF Directors and now want the properties for

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[1] *Rollo*, pp. 1-9.

[2] Rule 3.01 - A lawyer shall not use or permit the use of any false, fraudulent, misleading, deceptive, undignified, self-laudatory or unfair statement or claim regarding his qualifications or legal services.

[3] *Rollo*, pp. 10-16.

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

[5] Rule 19.01 - 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.

[6] *Rollo*, pp. 80-86.

[7] *Id.* at 45-78.

> themselves. Once litigated, the bank will be affected and damaged, while the good name, reputation, honesty and integrity of the 3 principal parties behind this sophisticated "plunder" will be destroyed. Hence, litigation should be avoided. This delicate case has to be resolved now confidentially and amicably to avoid disastrous scandal for all parties concerned.
>
> 12. The 3 principals behind/controlling Tala Realty Corporation should now be guided by their conscience. They are already very very rich. Their immense fortune can neither be taken beyond the grave while their children's children will still continue to live in abundance and luxury for all time.[8]
>
> x x x

In the amended complaint which Atty. Reyes filed with the SEC, he also averred:

> 33.3 Further, they also fraudulently covet and misappropriate for their own benefit these properties/funds/receivables belonging to Banco Filipino blatantly without the least shame or moral scruples to the great prejudice and gargantuan damage of the bank, hence, they are likewise criminally liable for related grave crimes punishable by the Revised Penal Code and the General Banking Act.[9]

These statements were "*abusive, offensive, or otherwise improper.*" The same transcended the permissible bounds of legitimate criticism, hence, were violative of Rule 8.01.

Atty. Reyes, too, violated Rule 19.01 because he "*presented unfounded criminal charges to obtain an improper advantage in any case or proceeding*" when he filed criminal cases for estafa (against Nancy Ty, Pedro Aguirre, Elizabeth Palma, Rolando Salonga, Rubencito del Mundo, Virgilio Gesmundo, Pilar Ongking, Dolly Lim, Cynthia Mesina, John Does and Jane Does) and falsification (against Nancy Ty, Pedro Aguirre, John Doe, Peter Doe, Richard Doe and Jane Doe) with the prosecution services of Rizal, Makati, and Manila. By engaging in forum-shopping, Atty. Reyes committed malpractice.

Atty. Reyes's Comment and Counter Complaint

In his Comment with Counter Complaint for Disbarment,[10] Atty. Reyes asserted in the main:

On October 6, 1993, his legal services were engaged to intervene in SEC Case Nos. 2693 and 219 specifically through a derivative suit purposely

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[8] *Id.* at 92.
[9] *Id.* at 71.
[10] The complaint was dated February 17, 1994, which may have been a typographical error. It was notarized on February 20, 1995. The correct date may have been February 17, 1995, *id.* at 205-242.

to protect the interests of BF Homes, which was being plundered by billions of pesos worth of assets. The measures he took in the SEC case were brought to the attention of BF Homes' directors and management officers, yet, he was viciously subjected to all sorts of blame, ridicule, and aspersion.[11]

On December 13, 1993, BF Homes Vice President Rodrigo Gatmaitan, Jr. issued a defamatory memo against him, prompting him, in turn, to issue a retaliatory memo on December 20, 1993. The memo was in defense of his good name, integrity, and honor as a man and as a professional. He was being blamed for the company's water shortage and the withdrawal of Balgos and Perez as BF Homes' counsel.[12]

The language he used in his memo and amended complaint was not abusive nor offensive. The words were apt, vivid, picturesque, proper, and elegant.[13] He did not initiate unfounded criminal charges to gain improper advantage. The criminal charge was an aspect of the efforts to recover eighteen (18) major Banco Filipino branches from Tala Realty Services Corporation. He pursued the complaints for estafa in Makati and for falsification of public documents in Manila on his client's instructions.[14]

Atty. Aguirre should be the one disbarred for gross violation of the CPR: a) Canon 1 and Rules 1.01, 1.02; b) Canon 7 and Rule 7.03; and c) Canon 10 and Rule 10.01.

Atty. Aguirre was a major stockholder of Tala Realty Services Corporation through his dummy Rubencito del Mundo, a member of the company's board of directors. Sometime between 1979 and 1980, Banco Filipino assets were placed in trust with Tala. Together with other major stockholders, Atty. Aguirre used Tala to plunder and inflict irreparable damage on Banco Filipino. They sold some of its assets, specifically its major branches and pocketed the profits as their own. Atty. Aguirre had already received millions of pesos from renting out Banco Filipino properties and from selling Banco Filipino's properties situated in Parañaque, Recto, and Cervantes. Atty. Aguirre and his cohorts did not even render a complete accounting of the transactions involving Banco Filipino assets.[15]

Atty. Aguirre's Comment

In his Comment[16] dated May 19, 1995, Atty. Aguirre essentially riposted: the matters raised by Atty. Reyes including Tala's alleged ownership of the controversial properties should be threshed out in appropriate judicial proceedings. The counter-complaint for disbarment against him is another harassment suit which should be dismissed outright.

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[11] *Id.* at 206.
[12] *Id.* at 206-214.
[13] *Id.* at 217.
[14] *Id.* at 218-219.
[15] *Id.* at 234-242.
[16] *Id.* at 286-290.

Proceedings Before the Integrated Bar of the Philippines – Commission on Bar Discipline (IBP-CBD)

By Resolution[17] dated June 7, 1995, the Court referred the case to the Integrated Bar of the Philippines – Commission on Bar Discipline (IBP – CBD). After due proceedings, the IBP-CBD under Order[18] dated February 2, 2006 directed the parties to manifest if they were still interested in pursuing the cases. In their respective manifestations,[19] the parties expressed interest to continue with the case. Atty. Reyes also moved for consolidation of the complaint and the counter[-]complaint.[20] Another round of proceedings was held, after which, the parties submitted their respective memoranda.[21]

Report and Recommendation of the IBP-CBD

By its Report and Recommendation[22] dated September 20, 2016, the IBP – CBD recommended the dismissal of both the complaint and the counter-complaint by reason of the death of Atty. Aguirre (ADM Case No. 4355) and for failure of Atty. Reyes to substantiate his charge against Atty. Aguirre who, as stated, had already died (CBD Case No. 06-1664) thus:

> **Adm. Case No. 4355**
> *(Atty. Pedro B. Aguirre v. Atty. Crispin T. Reyes)*
>
> The complainant [Atty. Pedro B. Aguirre] filed his Memorandum in July, 2007. The respondent [Atty. Crispin T. Reyes] filed his Memorandum in August, 2007. Since then, nothing has come out of this case. No proceedings of any kind were held in this case, and the parties alternated in having this case moved from one setting to another.
>
> The complainant died on September 6, 2013. Proof of his death was received by the Commission. He died without being able to submit proof in support of his charges against the respondent.
>
> On the other hand, the respondent is now a centenarian and long retired from professional practice. He had paid his dues, so to speak.
>
> For the reasons that the complainant is already dead, that complainant had not completed his chore of submitting proof in support of his charges against the respondent, and that the respondent is already a centenarian long retired from the practice of the legal profession, it is hereby recommended that this case against respondent Atty. Crispin T. Reyes be dismissed.

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[17] *Id.* at 299.
[18] *Id.* at 318.
[19] *Id.* at 319-323.
[20] *Id.* at 319.
[21] *Id.* at 334-385.
[22] *Id.* at 399-400.

CBD Case No. 06-1664
(Atty. Crispin T. Reyes v. Atty. Pedro B. Aguirre)

> In view of the death of respondent Atty. Pedro B. Aguirre on September 6, 2013, a fact established by a verified Certificate of Death submitted by respondent Aguirre's own counsel, it is respectfully recommended that the case against him [Atty. Pedro B. Aguirre] be dismissed for being moot and academic.
>
> RESPECTFULLY SUBMITTED.[23] *(italics supplied)*

Proceedings before this Court

By Resolution[24] dated February 12, 2018, the Court, in A.C. No. 11903, adopted and approved the recommendation of the IBP-CBD, dismissing the complaint against Atty. Aguirre by reason of the latter's death (CBD Case No. 06-1664).

The only unresolved case now is A.C. No. 4355 which Atty. Aguirre filed against Atty. Reyes.

Issue

Should the complaint for disbarment against Atty. Reyes still proceed despite the death of complainant Atty. Aguirre?

Ruling

A disbarment case is sui generis

At the threshold, the Court emphasizes anew that a disbarment case, being *sui generis*, may proceed despite a complainant's desistance or failure to prosecute, thus:

> A disbarment case is *sui generis* for it is neither purely civil nor purely criminal, but is rather an investigation by the court into the conduct of its officers. The issue to be determined is whether respondent is still fit to continue to be an officer of the court in the dispensation of justice. **Hence, an administrative proceeding for disbarment continues despite the desistance of a complainant, or failure of the complainant to prosecute the same,** or in this case, the failure of respondent to answer the charges against him despite numerous notices.[25] (Emphasis supplied)

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[23] *Id.*
[24] *Id.* at 405.
[25] *Bunagan-Bansig v. Atty. Celera*, 724 Phil. 141, 150 (2014).

Further, lawyers are officers of the court who are empowered to appear, prosecute, and defend the causes of their clients. The law imposes on them peculiar duties, responsibilities and liabilities. Membership in the bar imposes on them certain obligations. They are duty bound to uphold the dignity of the legal profession. They must act honorably, fairly and candidly towards each other and otherwise conduct themselves beyond reproach at all times.[26] Being, thus, officers of the court, complainants in cases against lawyers are treated as mere witnesses. Thus, complaints against lawyers may still proceed despite complainants' death. ***Tudtud v. Judge Coliflores***[27] is relevant:

> We do not agree with the recommendation. The death of the complainant herein does not warrant the non-pursuance of the charges against respondent Judge. In administrative cases against public officers and employees, the complainants are, in a real sense, only witnesses. **Hence, the unilateral decision of a complainant to withdraw from an administrative complaint, or even his death, as in the case at bar, does not prevent the Court from imposing sanctions upon the parties subject to its administrative supervision.** (Emphasis supplied)

Verily, Atty. Aguirre's death will not automatically warrant the dismissal of the disbarment complaint against Atty. Reyes.

We now resolve.

Quantum of evidence required in disbarment suits

In administrative proceedings, such as disbarment, the quantum of proof necessary for a finding of guilt is substantial evidence, *i.e.*, that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion. Complainants have the burden of proving by substantial evidence the allegations in their complaints. The basic rule is that mere allegation is not evidence and is not equivalent to proof. Charges based on mere suspicion and speculation likewise cannot be given credence.[28]

Atty. Reyes is liable for violation of Rule 8.01 of the CPR

Here, Atty. Aguirre charged Atty. Reyes with violating Rule 3.01 of the CPR for allegedly making false statements in his memo. The specific statements pertain to Atty. Reyes claiming that he was "*instrumental in winning the Supreme Court case*" and he made "*special arrangements.*" According to Atty. Aguirre, these statements not only put the Court in a bad

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[26] *Garcia v. Atty. Lopez*, 558 Phil. 1, 5 (2007).
[27] 458 Phil. 49, 53 (2003).
[28] *Cabas v. Sususco*, 787 Phil. 167, 174 (2016).

light, they too, purportedly amounted to "*false, fraudulent, misleading, deceptive, undignified, self-laudatory or unfair statement or claim regarding his qualifications or legal services*."

The thing speaks for itself. The statements are undoubtedly self-laudatory, nay, undignified. The standards of the legal profession condemn the lawyer's advertisement of his talents. A lawyer cannot, without violating the ethics of his profession, advertise his talents or skills in a manner similar to a merchant advertising his goods. The proscription against advertising of legal services or solicitation of legal business rests on the fundamental postulate that the practice of law is a profession.[29]

Whether in fact these statements are false, fraudulent, misleading, or deceptive is another story. There is nothing on record indicating them to be so. Surely, allegations must be proven by sufficient evidence because bare allegation is definitely not evidence.[30]

Regarding Atty. Aguirre's allegations that the statements put this Court in a bad light particularly the reference to "special arrangements," suffice it to state that standing alone, the so-called "special arrangements" are at best equivocal and cannot serve as basis to conclude that Atty. Reyes is guilty of unethical behavior. To repeat, allegations are not proof and petitioner bears the burden of substantiating the same.[31]

Atty. Aguirre also charged Atty. Reyes with violating Rule 8.01 when the latter purportedly employed abusive, offensive, or otherwise improper language in the following documents he drafted, *viz.*: the confidential/restricted memo dated March 28, 1994 and captioned "*Tala properties 'warehouses' by Banco Filipino,*" and the Amended Complaint dated May 10, 1994 in SEC Case 04-94-4750 entitled "*Eduardo Rodriguez, et al v. Tala Realty Services Corp., et al.*" These statements are: 1) "*Truly, we have here the biggest bank fraud involving over P1 Billion of Banco Filipino properties sold by simulated contracts to Tala controlled by parties who were then BF Directors and now want the properties for themselves;*" 2) "*The 3 principals behind/controlling Tala Realty Corporation should now be guided by their conscience. They are already very very rich;*" and 3) "*Further, they also fraudulently covet and misappropriate for their own benefit these properties/funds/receivables belonging to Banco Filipino blatantly without the least shame or moral scruples to the great prejudice and gargantuan damage of the bank.*"

Though a lawyer's language may be forceful and emphatic, it should always be dignified and respectful, befitting the dignity of the legal profession. The use of intemperate language and unkind ascriptions has no place in the dignity of the judicial forum.[32] On many occasions, the Court has

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[29] *Ulep v. The Legal Clinic, Inc.*, 295 Phil. 454, 487 (1993).
[30] See *Real v. Sangu Philippines, Inc. and/or Abe*, 655 Phil. 68, 86 (2011).
[31] See *Angeles v. Polytex Design, Inc. and/or Cua and Gabiola*, 562 Phil. 152, 160 (2007).
[32] *Noble III v. Atty. Ailes*, 762 Phil. 296, 301 (2015).

reminded the members of the Bar to abstain from any offensive personality and to refrain from any act prejudicial to the honor or reputation of a party or a witness. In keeping with the dignity of the legal profession, a lawyer's language even in his pleadings, must be dignified.[33]

Atty. Reyes here proudly proclaims that the statements he uttered are apt, vivid, picturesque, proper, and elegant. The Court finds these statements uncalled for and malicious, if not, defamatory. They constitute a personal attack against the persons being referred to. They were no longer relevant to the cases involving Banco Filipino and Tala at that time. ***Saberon v. Atty. Larong***[34] is apropos:

> Respecting respondent's argument that the matters stated in the Answer he filed before the BSP were privileged, **it suffices to stress that lawyers, though they are allowed a latitude of pertinent remark or comment in the furtherance of the causes they uphold and for the felicity of their clients, should not trench beyond the bounds of relevancy and propriety in making such remark or comment.**
>
> **True, utterances, petitions and motions made in the course of judicial proceedings have consistently been considered as absolutely privileged, however false or malicious they may be, but only for so long as they are pertinent and relevant to the subject of inquiry.** The test of relevancy has been stated, thus:
>
> > x x x. As to the degree of relevancy or pertinency necessary to make alleged defamatory matters privileged the courts favor a liberal rule. The matter 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 relevancy and impropriety. In order that matter alleged in a pleading may be privileged, it 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 x x x. (Emphasis supplied)

So must it be.

As for the appropriate penalty for violation of Rule 8.01, *Saberon* ordained:

> With regard to complainant's plea that respondent be disbarred, this Court has consistently considered disbarment and suspension of an attorney as the most severe forms of disciplinary action, which should be imposed with great caution. They should be meted out only for duly proven serious administrative charges.
>
> Thus, while respondent is guilty of using infelicitous language, such transgression is not of a grievous character as to merit respondent's disbarment. In light of respondent's apologies, the Court finds it best to temper the penalty for his infraction which, under the circumstances, is considered simple, rather than grave, misconduct.

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[33] *Gimeno v. Atty. Zaide*, 759 Phil. 10, 23-24 (2015).
[34] 574 Phil. 510, 518 (2008).

Applying *Saberon*, the Court finds Atty. Reyes guilty of simple misconduct for which he is fined ₱2,000.00.

Atty. Reyes was not guilty of forum-shopping

The Court first proscribed forum-shopping under its Administrative Circular No. 29-91 as the willful and deliberate act of filing multiple suits to ensure favorable action. From the legal ethics standpoint, forum-shopping may also constitute a violation of Canon 1,[35] Canon 12,[36] and Rule 12.04.[37] These provisions direct lawyers to obey the laws of the land and promote respect for the law and legal processes, impose on them the duty to assist in the speedy and efficient administration of justice, and prohibit them from unduly delaying a case by misusing court processes. Additionally, Atty. Reyes is charged with violating Rule 19.01 of the CPR.

Records bear out two (2) complaint-affidavits: the first was executed on August 3, 1994,[38] by Rodolfo Nazareno, Lauro Feliciano, Renato Balibag, and Lester Elido, charging respondents therein with estafa through unfaithfulness or abuse of confidence before the Office of the Provincial Prosecutor of Rizal; and the second was executed in October [21,] 1994[39] by the same complainants, charging the same respondents with falsification of public document before the Office of the City Prosecutor of Manila.

These complaint-affidavits pertain to two (2) distinct crimes, *i.e.* estafa and falsification. There may be identity of parties, rights or causes of action and reliefs sought but a conviction in the first case for estafa through unfaithfulness or abuse of confidence definitely will not preclude a finding of guilt for falsification of public document in another. For each crime requires the concurrence of different elements for conviction. Surely, there is no forum-shopping when the element of identity of right or cause of action is absent in the two (2) cases involved. For then, these cases will never give rise to *litis pendentia* or *res judicata*.

In fine, the charge of forum-shopping against Atty. Reyes must fail. Atty. Aguirre was not able to clearly demonstrate how the filing of the twin criminal complaints could have enabled Atty. Reyes to obtain improper advantage as a member of the bar.

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[35] CANON 1 - A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW OF AND LEGAL PROCESSES.

[36] CANON 12 - A LAWYER SHALL EXERT EVERY EFFORT AND CONSIDER IT HIS DUTY TO ASSIST IN THE SPEEDY AND EFFICIENT ADMINISTRATION OF JUSTICE.

[37] Rule 12.04 - A lawyer shall not unduly delay a case, impede the execution of a judgment or misuse Court processes.

[38] *Rollo*, pp. 116-135.

[39] *Id.* at 177-196.

ACCORDINGLY, respondent Atty. Crispin T. Reyes is found guilty of **SIMPLE MISCONDUCT** for using intemperate language in violation of 8.01 of the Code of Professional Responsibility. He is required to pay a fine of two thousand pesos (₱2,000.00) within five (5) days from notice thereof. For this purpose, he is **DIRECTED** to formally inform the Court of the exact date when he shall have received this decision.

Atty. Reyes is **ABSOLVED** of the charges of forum-shopping and violations of Rule 19.01, and Rule 10.03 in relation to Rule 12.02.

Let copy of this Decision be furnished the Office of the Bar Confidant for appropriate annotation in the record of Atty. Crispin T. Reyes.

SO ORDERED.

AMY C. LAZARO-JAVIER
Associate Justice

WE CONCUR:

DIOSDADO M. PERALTA
Chief Justice
Chairperson

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

JOSE C. REYES, JR.
Associate Justice

(on official leave)
MARIO V. LOPEZ
Associate Justice

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LIBRADA C. BUENA
Division Clerk of Court
First Division
Supreme Court