

## **SECOND DIVISION**

**[ A.C. No. 5043, September 19, 2001 ]**

**ABEDIN L. OSOP, COMPLAINANT, VS. ATTY. V. EMMANUEL C. FONTANILLA, RESPONDENT.**

### **D E C I S I O N**

**BUENA, J.:**

In a verified complaint filed on April 15, 1999, complainant Abedin Limpao Osop charged Atty. V. Emmanuel C. Fontanilla with Grave Misconduct in connection with Civil Case No. 6381 entitled, "Abedin Limpao Osop vs. Macapado Muslim and Virgilio Ramos" for Injunction with Prayer for Writ of Preliminary Injunction/Temporary Restraining Order, Damages and Attorney's Fees with the Regional Trial Court at General Santos City, Branch 22.

On July 24, 1998, the respondent, Atty. Fontanilla, suggested that Abedin Limpao Osop write a letter of reconsideration to Macapado Muslim, Chancellor of the Mindanao State University at General Santos City, one of the defendants in the case. Atty. Fontanilla represented on record that Mr. Muslim was his classmate/contemporary at MSU and that he could possibly convince the latter to reconsider.

During the hearing held on July 27, 1998, Atty. Fontanilla once again urged Mr. Osop to write the letter of reconsideration so that the negotiations could begin. At first Atty. Virgilio Alconera (counsel for the complainant) opposed the suggestion but eventually gave in by saying that if the court would direct his client to write a letter, he (Mr. Osop) would do so. On this basis, the court issued an order suggesting that Mr. Osop write the chancellor a letter of reconsideration without prejudice to the continuation of the hearing on the petition for a temporary restraining order should the latter be not receptive to the request. Based on the order of the court, and upon advise of his counsel, Mr. Osop wrote the letter of reconsideration on the same day. He furnished a copy to Atty. Fontanilla on even date and to the office of the chancellor the following day, July 28, 1998.

On July 30, 1998, Atty. Fontanilla filed a Manifestation praying for the dismissal of the case without prejudice in view of the Indorsement by defendant Macapado Muslim of Mr. Osop's letter to the University President for appropriate disposition, and in conjunction with the doctrine of exhaustion of administrative remedy.

The following day, Atty. Fontanilla manifested in court that he was not able to convince Mr. Muslim to agree to a settlement and apologized to the complainant and his counsel.

On August 6, 1998, respondent Atty. Fontanilla filed a motion to dismiss the civil case on the grounds of, among others, non-exhaustion of administrative remedies

and forum-shopping on account of the letter of reconsideration written and filed by Mr. Osop.

Abedin Limpao Osop claimed, among other things, that in filing the "Manifestation" and "Motion to Dismiss," Atty. Fontanilla had breached the trust and faith that he and his counsel have reposed in the latter; that the act of Atty. Fontanilla in soliciting the letter of reconsideration and using the same letter against him was a betrayal of trust; that it was Atty. Fontanilla who caused the creation of the administrative forum by soliciting the letter of reconsideration; that Atty. Fontanilla had committed a gross malpractice of law that constituted the administrative offense of grave misconduct.

In response, Atty. V. Emmanuel C. Fontanilla admitted that he made the suggestion to Mr. Osop and his counsel in good faith and in order for the parties to settle their dispute amicably; and that Mr. Osop was ably represented by counsel at the time the suggestion to write the letter of reconsideration was made. He denied misleading or misinforming the court or deceiving Mr. Osop and Atty. Alconera when he filed the manifestation and the motion to dismiss; that he raised the issue of exhaustion of administrative remedies even before the court approved his suggestion of a letter of reconsideration; and that he was merely complying with his duties as an officer of the court by bringing to the court's attention the fact that the issues raised by the complainant were being treated in two separate *fora*. He emphasized that the complainant suffered no damage because the case was dismissed for lack of jurisdiction and not due to the writing of the letter of reconsideration.

The main issue to be resolved is whether or not Atty. Fontanilla committed misconduct as a member of the bar when he solicited the said letter of reconsideration and later on using it to support his arguments for the dismissal of the civil case.

We find that Atty. V. Emmanuel C. Fontanilla is guilty of misconduct.

Misconduct, as defined in the case of ***Surigao del Norte Electric Cooperative vs. NLRC***,<sup>[1]</sup> is improper or wrong conduct. It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and ***implies wrongful intent*** and not mere error in judgment (emphasis supplied).

We can not find fault with Atty. Fontanilla's desire to have the case amicably settled. To this end he made the suggestion that Mr. Osop write the letter of reconsideration to serve as the starting point for the negotiation.

In open court, Atty. Fontanilla intimated that Chancellor Muslim had the power to reconsider the termination of Mr. Osop's services in MSU General Santos City and made it clear that he could probably convince the chancellor to reconsider his decision if a letter of reconsideration is written.

The Indorsement made by Chancellor Muslim to the University President indubitably showed that it is the latter who is the proper authority to resolve the letter of reconsideration.

The act of Atty. Fontanilla in rushing to court and filing the Manifestation the minute