

## **EN BANC**

**[ A.C. No. 10992, June 19, 2018 ]**

**RODOLFO M. YUMANG, CYNTHIA V. YUMANG AND ARLENE  
TABULA, COMPLAINANTS, VS. ATTY. EDWIN M. ALAESTANTE,  
RESPONDENT.**

**[A.C. No. 10993]**

**BERLIN V. GABERTAN AND HIGINO GABERTAN, COMPLAINANTS,  
VS. ATTY. EDWIN M. ALAESTANTE, RESPONDENT.**

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

**DEL CASTILLO, J.:**

Subject of the present Decision are two administrative cases for disbarment, separately filed against Atty. Edwin M. Alaestante (respondent lawyer) by complainants Rodolfo M. Yumang (Rodolfo), Cynthia V. Yumang (Cynthia), and Arlene Tabula (Arlene), in A.C. No. 10992, and Berlin V. Gabertan (Berlin), and Higinio Gabertan (Higinio), in A.C. No. 10993, (collectively, complainants). Complainants charged respondent lawyer with violating the Code of Professional Responsibility; gross ignorance of the law; grave misconduct; grave abuse of authority; gross dishonesty; malpractice; and infidelity to the client.<sup>[1]</sup>

#### **Facts**

On January 3, 2012, respondent lawyer wrote then Department of Justice (DOJ) Secretary Leila De Lima (Secretary De Lima) a letter,<sup>[2]</sup> viz.:

Dear Secretary De Lima:

May I respectfully request from your Honorable Office for the conduct of preliminary investigation and/or Prosecution of respondent Cynthia V. Yumang, et al., for the crimes of syndicated Estafa, Qualified Theft and Grave Threats.

Though mindful that venue/jurisdiction of the alleged crimes is primarily vested with your Public Prosecutor at Marikina City, we earnestly seek your good favor, and instead take a direct action on our case since respondent Cynthia V. Yumang is a savvy businesswoman and possesses material wealth and tremendous political clout and influence at Marikina City, and Complainants have [a] well[-]grounded belief that they could not obtain justice in [the] said venue. Complainants have already suffered injustice when they [first] lodged their complaint before the local police but they were instead given [a] run-around and advised for the 9<sup>th</sup> time to go back and forth to the Marikina Police Headquarters.

Compounding complainant[']s predicament, they are Engineers/Contractors based at Balanga City[,] Bataan and have no means and method[s] to steal-mate [sic] respondents influence and political clout at Marikina City, except via the direct intervention of your office.<sup>[3]</sup>

On even date, respondent lawyer's clients, Ernesto S. Mallari (Ernesto) and Danilo A. Rustia, Jr. (Danilo), executed a Joint Complaint Affidavit against herein complainants for syndicated estafa, qualified theft and grave threats cases.<sup>[4]</sup>

Claiming that respondent lawyer's January 3, 2012 letter contained scurrilous statements intended to malign and besmirch Cynthia's reputation and business standing, Cynthia and her husband, the complainant Rodolfo, filed a libel complaint against respondent lawyer, Ernesto, and Danilo before the Pasig City Prosecutor's Office (libel case).<sup>[5]</sup>

In their counter-affidavit, Ernesto and Danilo denied any knowledge of, or participation in, the writing of the said letter.<sup>[6]</sup>

On the other hand, respondent lawyer admitted that he was the author of the letter.<sup>[7]</sup> He denied, however, that the letter was libelous or defamatory, and insisted that the same was privileged communication. He claimed that he wrote the letter to protect and advance the interests of Ernesto and Danilo.<sup>[8]</sup>

In a Resolution<sup>[9]</sup> dated October 5, 2015, the Office of the City Prosecutor of Pasig found probable cause to indict respondent lawyer, as well as Ernesto, and Danilo, for the crime of libel.

In the meantime, in a Resolution<sup>[10]</sup> dated November 28, 2012, the DOJ dismissed for lack of merit, the complaint for syndicated estafa, qualified theft, and grave threats filed by Ernesto and Danilo against herein complainants.

Based on the foregoing, herein complainants filed on March 7, 2013, two separate disbarment complaints against respondent lawyer before the Integrated Bar of the Philippines (IBP).

In their Joint Affidavit of Complaint/Petition for Disbarment,<sup>[11]</sup> complainants Rodolfo, Cynthia, and Arlene averred that respondent lawyer violated his Oath of Office and the Code of Professional Responsibility, when he prepared, wrote, signed, and published the malicious and libelous January 3, 2012 letter.

For their part, complainants Berlin and Higinio declared in their *Sinumpaang Salaysay*<sup>[12]</sup> that they were the respondents in the alleged syndicated estafa, grave threats and qualified theft cases alongside their relatives, Cynthia and Arlene. They claimed that they had previously engaged respondent lawyer's legal services in other cases; that since they knew respondent lawyer, they approached him regarding his letter dated January 3, 2012, but respondent lawyer told them not to worry about the cases mentioned in the said letter, and promised to draft the appropriate pleadings for their defense; that indeed respondent lawyer drafted their

Counter-Affidavit and their Rejoinder by way of defense; and that in payment for his professional legal services, they issued respondent lawyer a Bank of Commerce check in the amount of P50,000.00.

Higino stressed that respondent lawyer's act of preparing their responsive pleadings in the syndicated estafa, grave threats and qualified theft cases was violative of the proscription against lawyers representing conflicting interests since he was the very same lawyer who initiated and/or drafted the complaint in these cases against them; and that as a consequence thereof, he (Berlin) moved to discharge respondent lawyer as counsel in another case.<sup>[13]</sup>

In his Answer,<sup>[14]</sup> respondent lawyer admitted that he was the author of the January 3, 2012 letter to then DOJ Secretary De Lima; but he insisted that the letter was privileged because it was written in response to a moral or legal duty, he being the lawyer for his clients in the cases mentioned in the letter. He denied that he was the defense counsel for Berlin and Higino in the syndicated estafa, grave threats and qualified theft cases, and averred that the P50,000.00 check that was issued in his favor by Berlin and Higino was just a "petty portion" of the P1.1 million that he previously entrusted to Berlin and Higino relative to a case that he lawyered for them.

#### ***Report and Recommendation of the Investigating Commissioner:***

In a Report and Recommendation<sup>[15]</sup> dated September 10, 2013, the Investigating Commissioner<sup>[16]</sup> recommended respondent lawyer's suspension from the practice of law for six months, in connection with the disbarment case filed by Cynthia, Rodolfo, and Arlene; and suspension from the practice of law for one year, in regard to the disbarment case filed by Berlin and Higino.

The Investigating Commissioner ratiocinated that -

It is admitted that Respondent authored a letter addressed to the Secretary of DOJ on January 03, 2012 and the matter was investigated by the DOJ but the same was dismissed for lack of merit. x x x

That prior to January 03, 2012 x x x filing of the charges with the DOJ, against herein Complainants, Berlin and Higino Gabertan engaged the services of Respondent as their counsel in several cases since April 2011 to August 31, 2012.

That Respondent received the amount of P50,000.00 from Berlin and Higino Gabertan thru Bank of Commerce check No. 0000008 dated June 11, 2012 and personally encashed by the Respondent (Exh. H). x x x

That because of that letter filed with the DOJ by Respondent and [which] was [later] dismissed, complainants filed a libel case with the RTC, Pasig City Branch 157 (Exh. D).

That the letter filed by Respondent with the DOJ [was] correctly ruled by the Office of the City Prosecutor of Pasig City, as not privileged communication as it [was] not made in the course of judicial

proceedings. (Exh. C).

That Respondent acted as defense counsel for Berlin and Higino Gabertan whom he charged together with the other complainants with the DOJ (Exh. L).

Clearly, Respondent violated the prohibition that [a] lawyer should not represent new clients whose interest oppose those of a former client in any manner, whether or not they are parties in the same action or totally unrelated cases. (In Re Dela Rosa, 27 Phil. 258. Lim et al. vs. Villorosa A.C. 5303 June 15, 2006).

It is enough that the counsel of one party had a hand in the preparation of the pleading of the other party, claiming adverse and conflicting interest with that of his original client. (Artezueta vs. Madferazo, A.C. No. 4354 April 22, 2002).

Respondent violated his Lawyer's Oath when he sent unsealed malicious and libelous letter against herein Complainants without any effort to ascertain the truth thus constituted gross evident bad faith for which act he is liable in CBD Case No. 13-3767 while for acting as counsel for the complainant in the case before the DOJ and [at] the same time preparing the counter affidavit of Berlin and Higino Gabertan who were Respondents] in the DOJ case he filed against herein complainants, thus he is also liable under CBD Case No. 13-3767.

It was found out also [that] the Respondent was the defense counsel of Berlin Gabertan whom he charged before the DOJ in an ongoing civil case at San Mateo, Rizal RTC Branch 76 but claimed that he was just acting as counsel pro-bono.

Complainants having presented sufficient evidence thus proving their case by clear preponderance of evidenced it is hereby recommended that Respondent be meted the appropriate penalty for the violation he committed.<sup>[17]</sup>

### ***Report and Recommendation of the IBP-Board of Governors (BOG):***

Finding the Report and Recommendation supported by law and the evidence, the IBP-BOG adopted and accepted the Investigating Commissioner's recommendation, but with modification as regards the recommended penalty in that respondent lawyer be suspended from the practice of law for one year in the complaint filed by Cynthia, Rodolfo, and Arlene; and for two years, in the case filed by Berlin and Higino,<sup>[18]</sup> said penalties to be served successively.

### **Ruling**

These administrative cases bear some factual resemblance to *Pacana, Jr. v. Atty. Pascual-Lopez*.<sup>[19]</sup> In *Pacana, Jr.*, the lawyer denied any lawyer-client relationship with the complainant, saying that no formal agreement had been entered to that effect; also, the therein counsel questioned the admissibility of an electronic mail he