

## THIRD DIVISION

[ A.C. No. 10782, September 14, 2016 ]

**ATTY. DELIO M. ASERON, COMPLAINANT, VS. ATTY. JOSE A. DIÑO, JR., RESPONDENT.**

### RESOLUTION

**REYES, J.:**

In a verified complaint<sup>[1]</sup> filed before the Commission on Bar Discipline (CBD) of the Integrated Bar of the Philippines (IBP), Atty. Delio M. Aseron (complainant) sought the disbarment of Atty. Jose A. Diño, Jr. (respondent) for his alleged violations of the Code of Professional Responsibility (CPR).

#### **The Facts of the Disbarment Case**

On January 25, 2009, the complainant figured in a vehicular accident along Commonwealth Avenue, Quezon City with a bus operated by Nova Auto Transport, Inc. (NATI) which, at that time, was driven by Jerry Garcia (Garcia).<sup>[2]</sup>

Consequently, the complainant filed the following cases: (i) a criminal case against Garcia for Reckless Imprudence Resulting in Damage to Property with Serious Physical Injuries docketed as Criminal Case No. 025403 before the Metropolitan Trial Court of Quezon City, Branch 36; (ii) a civil case for Damages against Garcia and NATI docketed as Ci Case No. Q-09-64558 before the Regional Trial Court of Quezon City, Branch 105. In both instances, the respondent is the counsel of record for Garcia and NATI.<sup>[3]</sup>

On March 3, 2009, Atty. Alberto H. Habitan, counsel for complainant, demanded from NATI damages in the amount of not less than Two Million Pesos (P2,000,000.00) as a result of the accident.<sup>[4]</sup>

The complainant, however, claimed that the respondent's reply letter<sup>[5]</sup> dated March 20, 2009, was couched in abusive, disrespectful language, malicious and unfounded accusations and besmirched his reputation.<sup>[6]</sup> The reply letter in part stated:

With reference to said Criminal Case No. 09-025403, we received information that [the complainant] allegedly used his "influence" in persuading the former handling Prosecutor of Inquest Case No. 09-388, not to allow the release of the Passenger Bus with Plate No. TWL-653, unless our client agrees to immediately pay the mercenary claim of Php 2 Million as demanded by [the complainant]. Fortunately, our client heeded our Law Office's persistent advice not to fall prey to such hustler tactic.<sup>[7]</sup>

Due to the insinuations made by the respondent in his reply letter, the complainant was constrained to file a libel case against the former before the Office of the City Prosecutor of Quezon City.<sup>[8]</sup>

Also, the complainant asseverated that the respondent made a mockery of the judicial system by employing unwarranted dilatory tactics in Criminal Case No. 025403 and Civil Case No. Q-09-64558 by filing numerous motions that were eventually denied by the courts for lack of merit.<sup>[9]</sup>

Moreover, the complainant alleged that the respondent committed malpractice by misleading the court when he admitted ownership of the passenger bus with body number 054 and plate number TWC 653 as that of NATI in one pleading and denying it in another.<sup>[10]</sup>

On February 11, 2010, the IBP-CBD issued an Order<sup>[11]</sup> directing the respondent to file his Answer within a period of 15 days from receipt thereof. The respondent, however, failed to file his Answer within the period given to him.

On August 9, 2010, the IBP-CBD issued a Notice<sup>[12]</sup> directing the parties to attend a mandatory conference. The parties were likewise ordered to submit their respective briefs at least three days prior to the scheduled conference.

On April 6, 2011, the IBP-CBD issued an Order<sup>[13]</sup> declaring the case submitted for resolution due to the respondent's failure to attend the mandatory conference and to file his brief.

### **Resolutions of the IBP**

On November 6, 2011, Commissioner Oliver A. Cachapero (Commissioner Cachapero) issued his Report and Recommendation<sup>[14]</sup> recommending that a penalty of censure be meted against the respondent for failure to conduct himself toward his fellow lawyer with courtesy.

On February 12, 2013, the IBP Board of Governors issued a Resolution<sup>[15]</sup> adopting and approving the Report and Recommendation of Commissioner Cachapero after finding that the respondent breached his ethical duties as a lawyer and that the same is fully supported by the evidence on record and the applicable laws and rules.

The respondent, on May 16, 2013, filed his motion for reconsideration<sup>[16]</sup> but the same was denied by the IBP Board of Governors in a Resolution<sup>[17]</sup> dated September 27, 2014 it being a mere reiteration of the matters which had already been threshed out and taken into consideration. The IBP Board of Governors, however, modified the penalty by increasing it from censure to reprimand.

Undaunted, the respondent filed a Motion for Leave to File and to Admit Motion for Reconsideration<sup>[18]</sup> on April 15, 2015 praying that second motion for reconsideration<sup>[19]</sup> be given due course.

### **Issue**

Essentially, the sole issue in the present case is whether or not there is sufficient evidence on record to hold the respondent liable for violation of the CPR.

### **Ruling of the Court**

#### ***The rule does not recognize the filing of a second Motion for Reconsideration***

In Bar Matter No. 1755, the Court emphasized the application of Section 12, Rule 139-B of the Rules of Court, thus:

In case a decision is rendered by the [Board of Governors] that exonerates the respondent or imposes a sanction less than suspension or disbarment, the aggrieved party can file a motion for reconsideration within the 15-day period from notice. If the motion is denied, said party can file a petition for review under Rule 45 of the Rules of Court with this Court within fifteen (15) days from notice of the resolution resolving the motion. If no motion for reconsideration is filed, the decision shall become final and executory and a copy of said decision shall be furnished this Court.<sup>[20]</sup>

Clearly, the rule does not recognize the filing of a second motion for reconsideration. In fact, the rule expressly provides that the proper remedy of the losing party is to file a Petition for Review under Rule 45 with this Court.

In accordance, however, with the liberal spirit pervading the Rules of Court and in the interest of substantial justice, the Court treats the second Motion for Reconsideration filed by the respondent as a petition for review under Rule 45. This is consistent with the *sui generis* nature of disbarment proceedings which focuses on the qualification and fitness of a lawyer to continue membership in the bar and not the procedural technicalities in filing the case.<sup>[21]</sup>

#### ***There is no sufficient reason to reverse the findings of the IBP***

Nonetheless, after a careful perusal of the records of the case, the Court agrees with the findings of the IBP-CBD and the Board of Governors that the respondent violated the CPR when he used intemperate language in his letter to the complainant.

Canon 8 of the CPR directs all members of the bar to conduct themselves with courtesy, fairness, and candor towards their fellow lawyers and avoid harassing tactics against opposing counsel. Specifically, in Rule 8.01, the CPR provides:

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

In the present case, the respondent's actions failed to measure up to this Canon. Records show that he imputed to the complainant the use of his influence as a former public prosecutor to harass his clients during the inquest proceedings without sufficient proof or evidence to support the same.

As an officer of the court, the respondent could have aired his charge against the complainant in a proper forum and without using offensive and abusive language.