

THIRD DIVISION

[A.C. No. 10565, September 07, 2016]

**PROSECUTOR RHODNA A. BACATAN, COMPLAINANT, VS. ATTY.
MERARI D. DADULA, RESPONDENT.**

DECISION

JARDELEZA, J.:

In a Complaint^[1] dated June 16, 2008 submitted to the Cebu City Chapter of the Integrated Bar of the Philippines (IBP), Rhodna A. Bacatan, Assistant Cebu City Prosecutor (complainant) charged Atty. Merari D. Dadula (respondent) with violation of: a) Canon 8, Rule 8.01 of the Code of Professional Responsibility; b) the disregard of the duties of attorneys, particularly under paragraph (d) of Section 20, Rule 138 of the Revised Rules of Court; and c) her lawyer's oath not to do falsehood nor consent to the doing of any.^[2]

Facts

Between September and October 2007, the following cases were raffled to complainant for preliminary investigation: (1) a complaint for libel (I.S. No. 4760) filed by Rev. Jose Bailey Bernaldez against Dr. Carlito Impas, Sr.; and (2) a complaint for falsification (I.S. No. 4999-J) filed by Dr. Carlito Impas, Jr. against Rev. Jose Bailey Bernaldez. Respondent was the counsel of Carlito Impas, Jr.^[3] Complainant found probable cause for libel and recommended its filing in court, while the complaint for falsification was recommended for dismissal for lack of probable cause.^[4] Both recommendations were approved by the City Prosecutor.^[5]

Respondent filed a Motion to Determine Probable Cause With Motion to Hold in Abeyance Trial With Motion to Defer Issuance of Warrant and Motion to Defer Posting of Reduced Bail Bond^[6] in the libel case. In her pleadings, respondent accused complainant of manifest partiality and bias against her client when complainant: 1) summarily ruled that the publication of the letter was libelous but miserably failed to point out, in her Resolution, which portion constituted libel; 2) denied the motion for reconsideration with dispatch in an undated Order; 3) "sat" on the falsification case for she did not resolve it with dispatch unlike what she did in this libel case;^[7] 4) did not send a copy of the resolution in the libel case to the accused; 5) dismissed the falsification case even if mere was clear admission from the accused in the case that it was his signature; and 6) lodged the information in the libel case within the period to appeal the undated Order.^[8] Respondent perceived an obvious disparity in her treatment of these two cases and further noticing the swiftness of her (Prosecutor Bacatan) Resolution and Order in this libel case which is utterly adverse against the accused despite the glaring fact that no probable cause exists to hold him for libel.^[9] Respondent then concluded that "[a]ll

these adverse actions of prosecutor Bacatan against herein accused impels him to one inevitable conclusion: the prosecutor must have been bribed."^[10]

In her Comment,^[11] complainant denied the charges of undue haste on the libel case and undue delay on the falsification case. According to her, the two cases were raffled on different dates and received by her office on separate dates. Adopting a *first-in-first-out policy*, the libel case, which was raffled first was resolved earlier than the falsification case.^[12] Moreover, she did not sit on the falsification case or act with undue haste in the libel case, but merely followed the procedure in resolving cases at the Cebu City Prosecutor's Office.^[13] In her Rejoinder,^[14] respondent claimed that complainant's undue haste and grave irregularity in handling the case is evident from the Resolution and Information which she prepared and signed on the same day, November 20, 2007.^[15]

On October 13, 2008,^[16] the IBP required respondent to file her Answer.^[17]

In her Answer, respondent insisted that complainant follow the regular procedure. She reiterated the arguments raised in her motion to determine probable cause and in her Rejoinder. She also invoked as an affirmative defense the Order of the Regional Trial Court, Branch 23 of Cebu City (RTC), granting the motion to determine probable cause for the libel case, dated August 26, 2008.^[18] She also presented as evidence the RTC Decision^[19] dated June 29, 2012 acquitting Dr. Impas, Jr. from the charge of libel.^[20]

Pending the results of the investigation of this Complaint, respondent also filed on December 20, 2010, a Complaint for Violation of Section 3 (e) of Republic Act No. 3019 and a Petition for Disbarment and Imposition of Appropriate Disciplinary Actions^[21] before the Office of the Ombudsman for the Visayas and the IBP, respectively. The petition contained the same allegations made on the motion to determine probable cause and in the Rejoinder, but no new issues were raised against the complainant.

IBP Investigating Commissioner Hector B. Almeyda (Commissioner Almeyda), in his Report and Recommendation,^[22] stated that it is the practice of the National Prosecution Service that where the resolution is one finding probable cause for the filing of a case, the investigating prosecutor already prepares the corresponding information to facilitate the movement of the case, should the reviewing officers affirm the finding of probable cause. The similarity of dates of the resolution that has yet to be affirmed with the information is inconsequential and hardly gives room to question the regularity of the process.^[23]

Commissioner Almeyda found that respondent failed to abide by the bounds of courtesy, fairness and candor as provided in Canon 8 of the Code of Professional Responsibility. She "had overstepped the bounds of fair play and have drawn herself to the maelstrom of misconduct by dangerously and recklessly including in her pleadings a completely and irrelevant allegation concerning complainant's character that did not enter into the equation as a factor in the determination of whether probable cause existed in the matter tasked by the processes to be resolved by complainant."^[24] Commissioner Almeyda observed however, that respondent was, "a comparatively new member of the profession," and reminded her "to be a bit more circumspect in her choice of words in championing the cause of her client."^[25]

The Commissioner recommended that respondent be "strongly reprimanded, with warning that a similar or any other future infraction of the Code of Professional Responsibility shall be dealt with more severely."^[26]

On March 20, 2013, the IBP Board of Governors passed Resolution No. XX-2013-216,^[27] adopting and approving Commissioner Almeyda's Report and Recommendation.

Ruling

The Court concurs with the finding of the IBP but takes exception to the recommended penalty to be imposed, which is light in relation to the circumstances presented in this case.

Membership in the bar imposes upon lawyers certain obligations to one another, including the observance of honourable, candid and courteous dealings with other lawyers,^[28] as well as maintaining fidelity to known and recognized customs and practices of the bar that make the practice of law a profession.^[29]

The unfavourable resolutions against her client prompted respondent to hurl accusations of irregularity and bribery against complainant. Strongly worded statements by a lawyer against opposing counsel, if justified by the records, may not justify disciplinary actions against the former.^[30] But such is not the case here. Respondent's tirades against complainant have proven to be baseless.

As found by the IBP, that the dates of the finding of probable cause and that of the filing of the information are the same, is explained by the prevailing practice in the National Prosecution Service: an information is prepared together with the resolution finding probable cause to facilitate the movement of the case.^[31] Respondent could have easily verified this practice before she resorted to condemning complainant and her actions. Respondent failed to substantiate her bare allegations and sweeping conclusion of irregularity and charge of bribery, basing her charges purely on her flimsy gut feeling. It is unethical for a lawyer to accuse another lawyer wantonly and maliciously of a serious misconduct in the absence of a reasonable cause.^[32]

Further, the attack on the character of the complainant is also completely unnecessary in the motion for determination of probable cause on the libel case. Contrary to respondent's contention, her misconduct is not cured nor justified by the eventual acquittal of her client.

We note the IBP's observation that during the times material to the case, respondent was considerably new to the profession,^[33] and must have been overzealous in protecting the cause of her client, even akin to overenthusiasm. Members of the Bar must be reminded that "enthusiasm, or even excess of it, is not really bad. In fact, the one or the other is no less a virtue, if channeled in the right direction. However, it must be circumscribed within the bounds of propriety and with due regard for the proper place of courts in our system of government."^[34]

In earlier cases, we meted the penalty of fine for a lawyer's use of intemperate language. *Saberon v. Larong*^[35] declared a lawyer guilty of simple misconduct and imposed upon him a P2,000.00 fine for referring to a party's pleadings as "a series