

SECOND DIVISION

**[A.C. No. 7250 [Formerly CBD Case No. 05-1448],
April 20, 2015]**

**ATTY. RICARDO M. ESPINA, COMPLAINANT, VS. ATTY. JESUS G.
CHAVEZ, RESPONDENT.**

DECISION

BRION, J.:

Before this Court is a Complaint for Disbarment/Suspension^[1] that Atty. Ricardo M. Espina (*Atty. Espina*) filed against Atty. Jesus G. Chavez (*Atty. Chavez*) with the Integrated Bar of the Philippines (*IBP*) on March 23, 2005 for violation of Canon 19, Rule 19.01 of the Code of Professional Responsibility.^[2]

The IBP Report and Recommendation^[3] transmitted to this Court on May 29, 2006 recommended the dismissal of the charge for lack of proof.

On August 28, 2006, Atty. Espina filed with this Court a Petition for Review on *Certiorari*^[4] questioning the IBP findings. On February 28, 2007, Atty. Chavez filed his Comment on the Petition^[5] in compliance with our Resolution of December 11, 2006.

The Facts

On November 3, 2004, Atty. Espina and his law firm represented Atty. Espina's parents in an ejectment suit filed against Remedios C. Enguio (*Enguio*) in the Municipal Trial Court (*MTC*) of Carmen, Agusan Del Norte. Atty. Chavez who was then a Public Attorney III of the Public Attorney's Office, Regional Office XIII, Butuan City represented Enguio.^[6]

On May 20, 2005, the MTC dismissed the ejectment suit for lack of cause of action. On February 13, 2007, the Regional Trial Court (*RTC*) affirmed the MTC decision.^[7] Neither party appealed the RTC decision.

During the pendency of the ejectment suit, Atty. Chavez committed an act apparently in his official capacity, which prompted Atty. Espina to file his Complaint for Disbarment/Suspension with the IBP.

While the narratives of Atty. Espina and Atty. Chavez diverged on many points, the following facts are undisputed and stipulated during the preliminary hearing before the IBP Commissioner on June 24, 2005:^[8]

1. Atty. Espina's parents, represented by Atty. Espina, filed an ejectment complaint against Enguio, represented by Atty. Chavez.
2. During the pendency of the ejectment case, Atty. Espina sent a letter^[9] dated December 13, 2004 to the Department of Justice (DOJ) Secretary captioned "*Abrasive and harassment tactics of Public Attorney IH Jesus G. Chavez.*" The letter alleged that the Answer Atty. Chavez prepared in the ejectment case contained offensive statements.^[10]
3. Also while the ejectment case was pending, Atty. Chavez, as a Public Attorney, *endorsed* through a letter (*transmittal letter*) to the Provincial Prosecutor,^[11] the filing of a criminal complaint for Violation of Article 172 (Falsification by private individual and use of falsified document) of the Revised Penal Code (RPC) against Atty. Espina, his wife (who is a partner in his law office) and his parents.
4. The criminal complaint was based on the affidavit-complaint executed by Enguio.^[12] In this affidavit-complaint, Enguio alleged that "in order to fashion a case for Ejectment, respondents made an untruthful statement in the narration of facts (par. 4, Article 171)."

The Provincial Prosecutor dismissed the falsification complaint for lack of probable cause.^[13]

In the meantime, the DOJ Secretary endorsed Atty. Espina's letter captioned "*Abrasive and harassment tactics of Public Attorney III Jesus G. Chavez*" to the Office of the Chief Public Attorney (*Chief PAO*) for action.

The Chief PAO ordered Atty. Chavez to comment on the letter. Atty. Espina then filed his rebuttal to Atty. Chavez's comment.

A portion of Atty. Espina's rebuttal letter reads: "*Baka kulangpo ng indoctrination itong si Atty. Chavez sa concept ng Torrens system, i-suspend nyo po muna siya not for the purpose of penalizing him but for him to be given time to take continuing legal education on Torrens system.* "

The Chief PAO, in her Resolution dated May 5, 2005, dismissed the complaint against Atty. Chavez.

The IBP Report and Recommendation^[14]

Based on the facts and as stipulated by the parties, the IBP Commissioner distilled the issues to be resolved as follows:

1. Whether or not PAO III Jesus G. Chavez violated Rule 19.01 of Canon 19 of the Code of Professional Responsibility when he prepared and transmitted the complaint of Remedios Enquio for falsification to the Provincial Prosecutor of Agusan del Norte.

2. Whether or not the complaint for falsification was an unfounded charge intended to obtain improper advantage in a case or proceeding.

The IBP Commissioner noted that the complaint is anchored on the alleged indispensable assistance extended by Atty. Chavez in the preparation and filing of the falsification complaint, as proven by the transmittal letter to the Provincial Prosecutor.

The IBP Commissioner held that the preparation and transmittal of the criminal complaint to the Provincial Prosecutor's Office is not *per se* an unfair and dishonest means employed by Atty. Chavez.

The IBP Commissioner found that the criminal charge endorsed by Atty. Chavez was not exactly unfounded or wanting in basis. He observed that the complaint for ejectment contained conflicting averments, *i.e.*, while it is alleged that the discovery of Enguio's occupation of the disputed property was made in November 2003, the letter demand to Enguio to vacate the property (which was attached to the complaint) categorically stated that the defendant had been notified as early as 1997 that her possession and/or occupation of the property was illegal.

The IBP Commissioner - based on her examination of the submitted facts and evidence - concluded that Atty. Chavez was honestly mistaken when he construed the contradictory allegations in the complaint for ejectment as criminal falsification under the Revised Penal Code. He noted that lawyers are not liable for honest mistakes. He dismissed the complaint given the dearth of competent evidence on record to substantiate Atty. Espina's allegation that the transmission of the complaint for falsification was intended to gain an advantage in the civil complaint for ejectment.

The IBP Board of Governors adopted and approved *in toto* the IBP Commissioner's report and recommendation.^[15]

Our Ruling

We affirm the IBP Report and Recommendation.

The complaint is anchored on the alleged violation by Atty. Chavez of Canon 19, Rule 19.01 of the Code of Professional Responsibility, *viz*:

Canon 1: A lawyer shall represent his client with zeal within the bounds of law.

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.

(Underscoring supplied.)

Atty. Espina contends that Atty. Chavez violated the above-quoted provisions when he indispensably participated in the filing of the falsification complaint against him, his wife and his parents. The falsification case was filed, according to Atty. Espina, solely for the purpose of gaining an improper advantage and leverage in the ejectment case.^[16]

Atty. Espina further argues that Atty. Chavez participated in the filing of the baseless criminal complaint by (i) goading Enguio to file the criminal complaint and (ii) ensuring that the criminal complaint was acted upon by the Office of the Provincial Prosecutor by sending the transmittal letter to the said office under Atty. Chavez's signature.^[17]

We find Atty. Espina's position unmeritorious and without basis.

What Rule 19.01 prohibits is the filing or the threat of filing **patently frivolous and meritless** appeals or **clearly groundless actions** for the purpose of gaining improper advantage in any case or proceeding.^[18]

Two elements are indispensable before a lawyer can be deemed to have violated this rule: (i) the filing or threat of filing a patently frivolous and meritless action or appeal and (ii) the filing or threat of filing the action is intended to gain improper advantage in any case or proceeding.

Our jurisprudence is replete with cases on these points.

In *Pena v. Atty. Aparicio*,^[19] the lawyer sent a demand letter to his client's employer which contained threats of filing criminal charges for tax evasion, falsification of documents and cancellation of business license *if* the separation pay allegedly due to his client was not paid. The lawyer drafted the demand letter in response to the notice to return to work sent by the employer.

We held that Atty. Aparicio did exactly what Canon 19 and its Rules prohibit. The threat to file the cases against the employer was designed to secure leverage to compel the latter to give in to Atty. Aparicio's demands. The letter in this case contained more than just a simple demand to pay. It contained threat to file retaliatory charges against the complainant which had nothing to do with the claim for separation pay. The letter was obviously designed to secure leverage to compel the employer to yield to the client's claims.^[20]

In *Ong v. Atty. Unto*,^[21] we reprimanded a lawyer when he sent a demand letter which also contained the threat of various charges against the complainant if the latter failed to comply with the lawyer's demands. The lawyer, in fact, made good his promise when the complainant did not heed his warning. The lawyer filed an array of criminal and administrative charges against the complainant, which charges were irrelevant to his client's claim.

We held in *Ong* that: