

## THIRD DIVISION

[ A.C. NO. 6691, April 27, 2007 ]

**ATTY. GEORGE C. BRIONES, COMPLAINANT, VS. ATTY. JACINTO D. JIMENEZ,**

### RESOLUTION

**AUSTRIA-MARTINEZ, J.:**

The root of herein administrative complaint for Disbarment<sup>[1]</sup> dated August 12, 2004 filed by Atty. George S. Briones charging Atty. Jacinto D. Jimenez with violation of Revised Circular No. 28-91 on forum-shopping and Rule 19.01 and Rule 12.08 of the Code of Professional Responsibility, is the April 3, 2002 Order of the Regional Trial Court (RTC) of Manila in SP Proc. No. 99-92870, entitled, "In the Matter of the Petition for the Allowance of the Will of Luz J. Henson", to wit:

IN VIEW OF THE FOREGOING, the court hereby:

1. Reiterates its designation of the accounting firm of Messrs. Alba, Romeo & Co. to immediately conduct an audit of the administration by Atty. George S. Briones of the estate of the late Luz J. Henson, the expenses of which shall be charged against the estate.
2. Suspends the approval of the report of the special administrator except the payment of his commission which is hereby fixed at 1.8% of the value of the estate.
3. Directs the special administrator to deliver the residue to the heirs in proportion to their shares. From the share of Lilia J. Henson-Cruz, there shall be deducted the advances made to her.

IT IS SO ORDERED.

Complainant Atty. Briones is the Special Administrator of the Estate of Luz J. Henson. Respondent Atty. Jacinto D. Jimenez is the counsel for the Heirs of the late Luz J. Henson (Heirs).

On April 9, 2002, Atty. Jimenez filed with the RTC a notice of appeal from the Order dated April 3, 2002, questioning the payment of commission to Atty. Briones.<sup>[2]</sup>

On April 29, 2002, Atty. Jimenez filed with the Court of Appeals (CA) a Petition for *Certiorari*, Prohibition and *Mandamus*, docketed as CA-G.R. SP No. 70349 assailing the Order dated March 12, 2002, appointing the firm of Alba, Romeo & Co. to conduct an audit at the expense of the late Luz J. Henson, as well as the Order dated April 3, 2002, insofar as it denied their motion for recommendation.<sup>[3]</sup>

On July 26, 2002, Atty. Jimenez filed with the CA a Petition for *Mandamus*, docketed

as CA-G.R. No. 71844,<sup>[4]</sup> alleging that the respondent Judge therein unlawfully refused to comply with his ministerial duty to approve their appeal which was perfected on time.<sup>[5]</sup>

Atty. Briones, in his Comment, contends that the heirs of the late Luz J. Henson, represented by Atty. Jimenez, are guilty of forum shopping for which reason, the petition should be dismissed. <sup>[6]</sup>

On February 11, 2003, the CA without touching on the forum shopping issue, granted the petition and ordered the respondent Judge to give due course to the appeal taken by Atty. Jimenez from the Order dated April 3, 2002, insofar as it directed the payment of commission to Atty. Briones.<sup>[7]</sup>

Atty. Briones then filed with this Court a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, docketed as G.R. No. 159130, praying for the dismissal of the appeal from the Order dated April 3, 2002, insofar as it ordered the payment of commission to him, as the Special Administrator of the estate of the deceased Luz J. Henson.<sup>[8]</sup>

The Court gave due course to the petition and required the parties to file their respective memoranda.

Atty. Briones (hereinafter referred to as complainant) filed his "Memorandum with Administrative Complaint for Disbarment against Atty. Jacinto Jimenez, Counsel for Respondents",<sup>[9]</sup> for violation of Rule 19.01 and Rule 12.08 of the Code of Professional Responsibility and Revised Circular No. 28-91 on forum shopping.

Complainant claims that Atty. Jimenez (hereinafter referred to as respondent) and the Heirs engaged again in forum shopping when respondent, as counsel for the Heirs, filed a criminal complaint and executed an affidavit against complainant for resisting and seriously disobeying the RTC Order dated April 3, 2002 which directed complainant to deliver the residue of the estate to the Heirs in proportion to their shares, punishable under Article 151 of the Revised Penal Code.

Complainant further claims that respondent violated Rules 19.01 and 12.08 of the Code of Professional Responsibility, to wit:

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 of proceeding.

Rule 12.08 — A lawyer shall avoid testifying in behalf of his client, except:

(a) on formal matters, such as the mailing, authentication or custody of an instrument, and the like; or

b) on substantial matters, in cases where his testimony is essential to the ends of justice, in which event he must, during his testimony, entrust the trial of the case to another counsel.