

SECOND DIVISION

[A.C. NO. 7298 (FORMERLY CBD CASE NO. 05-1565), June 25, 2007]

FERNANDO MARTIN O. PENA, COMPLAINANT, VS. ATTY. LOLITO G. APARICIO, RESPONDENT.

RESOLUTION

TINGA, J.:

In this administrative complaint, a lawyer is charged with violation of Rule 19.01 of Canon 19 of the Code of Professional Responsibility for writing a demand letter the contents of which threatened complainant with the filing of criminal cases for tax evasion and falsification of documents.

Atty. Lolito G. Aparicio (respondent) appeared as legal counsel for Grace C. Hufana in an illegal dismissal case before the National Labor Relations Commission (NLRC). Sometime in August 2005, complainant Fernando Martin O. Pena, as President of MOF Company, Inc. (Subic), received a notice from the Conciliation and Mediation Center of the NLRC for a mediation/conciliation conference. In the conference, respondent, in behalf of his client, submitted a claim for separation pay arising from her alleged illegal dismissal. Complainant rejected the claim as being baseless. Complainant thereafter sent notices to Hufana for the latter to explain her absences and to return to work. In reply to this return to work notice, respondent wrote a letter to complainant reiterating his client's claim for separation pay. The letter also contained the following threat to the company:

BUT if these are not paid on **August 10, 2005**, we will be constrained to file and claim bigger amounts including moral damages to the tune of millions under established precedence of cases and laws. In addition to other multiple charges like:

1. Tax evasion by the millions of pesos of income not reported to the government.
2. Criminal Charges for Tax Evasion
3. Criminal Charges for Falsification of Documents
4. Cancellation of business license to operate due to violations of laws.

These are reserved for future actions in case of failure to pay the above amounts as settlements in the National Labor Relations Commission (NLRC).^[1]

Believing that the contents of the letter deviated from accepted ethical standards, complainant filed an administrative complaint^[2] with the Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP). Respondent filed an Answer with Impleader (Motion to Dismiss and Counterclaims)^[3] claiming that Atty. Emmanuel A. Jocson, complainant's legal counsel, also played an important part in

imputing the malicious, defamatory, and fabricated charges against him. Respondent also pointed out that the complaint had no certification against forum shopping and was motivated only to confuse the issues then pending before the Labor Arbiter. By way of counterclaim, respondent asked for damages and for the disbarment of Atty. Jocson. Respondent also asked the IBP to endorse the prosecution of Atty. Jocson for Usurpation of Public Functions^[4] and for violation of the Notarial Law.^[5]

A mandatory conference was held on 6 December 2005 but respondent failed to appear.^[6] Both parties were thereafter required to submit their position papers.

The Report and Recommendation^[7] of Investigating Commissioner Milagros V. San Juan found that complainant, failed to file his position paper and to comply with Administrative Circular No. 04-94 requiring a certificate against forum shopping and, accordingly, recommended the dismissal of the complaint against respondent. On 26 May 2006, the IBP Board of Governors adopted and approved the Report and Recommendation of the Investigating Commissioner.^[8] On 10 July 2006, the IBP Commission on Bar Discipline transmitted to the Supreme Court the notice of said Resolution and the records of the case.^[9] Thereafter, on 18 August 2006, respondent filed with the IBP a Motion for Reconsideration (for Modification of Decision)^[10] reiterating his claim of damages against complainant in the amount of four hundred million pesos (P400,000,000.00), or its equivalent in dollars, for filing the "false, malicious, defamers [sic], fraudulent, illegal fabricators [sic], malevolent[,], oppressive, evasive filing [of] a groundless and false suit."^[11]

Complainant thereafter filed this Petition for Review (of the Resolution of the IBP Commission on Bar Discipline)^[12] alleging that he personally submitted and filed with the IBP his position paper, after serving a copy thereof on respondent by registered mail. He further alleges that he was deprived of his right to due process when the IBP dismissed his complaint without considering his position paper and without ruling on the merits thereof.

Complainant accordingly prays for the reversal and setting aside of the 26 May 2006 Resolution^[13] of the IBP Board of Governors and the remand of the case to the IBP Commission on Bar Discipline for proper adjudication and disposition on the merits.

Based on the records, there is truth to complainant's assertion that he filed his position paper on 21 December 2005, after serving a copy of the same to respondent. The IBP stamp on the front page of said document shows that it was received by the IBP on 21 December 2005. The registry receipt attached to the same document also shows that it was sent by registered mail to respondent on the same date. ^[14]

Complainant, however, omitted to offer any explanation in his petition before this Court for his failure to attach a certification against forum shopping in his complaint against respondent.

The requirement of a certification against forum shopping was originally required by Circular No. 28-91, dated 8 February 1994, issued by this Court for every petition filed with the Court or the Court of Appeals. Administrative Circular No. 04-94, made

effective on 1 April 1994, expanded the certification requirement to include cases filed in courts and quasi-judicial agencies below this Court and the Court of Appeals. Ultimately, the Court adopted paragraphs (1) and (2) of Administrative Circular No. 04-94 to become Section 5, Rule 7 of the 1997 Rules of Civil Procedure.^[15] Said rule states that a violation thereof would constitute contempt of court and be cause for the summary dismissal of both petitions without prejudice to the taking of appropriate action against the counsel of the party concerned.^[16]

The Investigating Commissioner and the IBP Board of Governors took against complainant his failure to attach the certification against forum shopping to his complaint and consequently dismissed his complaint. This Court, however, disagrees and, accordingly, grants the petition. However, a remand of the case to the IBP would unduly prolong its adjudication.

The Court's determination is anchored on the *sui generis* nature of disbarment proceedings, the reasons for the certification against forum shopping requirement, complainant's subsequent compliance with the requirement, and the merit of complainant's complaint against respondent.

The Court, in the case of *In re Almacen*,^[17] dwelt on the *sui generis* character of disciplinary proceedings against lawyers, thus:

Disciplinary proceedings against lawyers are *sui generis*. **Neither purely civil nor purely criminal**, they do not involve a trial of an action or a suit, but is rather an **investigation by the Court into the conduct of one of its officers**. Not being intended to inflict punishment, it is in no sense a criminal prosecution. Accordingly, **there is neither a plaintiff nor a prosecutor therein**. It may be initiated by the Court *motu proprio*. **Public interest is its primary objective, and the real question for determination is whether or not the attorney is still a fit person to be allowed the privileges as such.** Hence, in the exercise of its disciplinary powers, **the Court merely calls upon a member of the Bar to account for his actuations as an officer of the Court with the end in view of preserving the purity of the legal profession and the proper and honest administration of justice by purging the profession of members who by their misconduct have proved themselves no longer worthy to be entrusted with the duties and responsibilities pertaining to the office of an attorney. In such posture, there can thus be no occasion to speak of a complainant or a prosecutor.**^[18] [Emphasis supplied]

In view of the nature of disbarment proceedings, the certification against forum shopping to be attached to the complaint, if one is required at all in such proceedings, must refer to another administrative case for disciplinary proceedings against the same respondent, because such other proceedings or "action" is one that necessarily involves "the same issues" as the one posed in the disbarment complaint to which the certification is supposedly to be attached.

Further, the rationale for the requirement of a certification against forum shopping is to apprise the Court of the pendency of another action or claim involving the same issues in another court, tribunal or quasi-judicial agency, and thereby precisely

avoid the forum shopping situation. Filing multiple petitions or complaints constitutes abuse of court processes,^[19] which tends to degrade the administration of justice, wreaks havoc upon orderly judicial procedure, and adds to the congestion of the heavily burdened dockets of the courts.^[20] Furthermore, the rule proscribing forum shopping seeks to promote candor and transparency among lawyers and their clients in the pursuit of their cases before the courts to promote the orderly administration of justice, prevent undue inconvenience upon the other party, and save the precious time of the courts. It also aims to prevent the embarrassing situation of two or more courts or agencies rendering conflicting resolutions or decisions upon the same issue.^[21]

It is in this light that we take a further look at the necessity of attaching a certification against forum shopping to a disbarment complaint. It would seem that the scenario sought to be avoided, *i.e.*, the filing of multiple suits and the possibility of conflicting decisions, rarely happens in disbarment complaints considering that said proceedings are either "taken by the Supreme Court *motu proprio*, or by the Integrated Bar of the Philippines (IBP) upon the verified complaint of any person."

^[22] Thus, if the complainant in a disbarment case fails to attach a certification against forum shopping, the pendency of another disciplinary action against the same respondent may still be ascertained with ease. We have previously held that the rule requiring a certification of forum shopping to accompany every initiatory pleading, "should not be interpreted with such absolute literalness as to subvert its own ultimate and legitimate objective or the goal of all rules of procedure—which is to achieve substantial justice as expeditiously as possible."^[23]

At any rate, complainant's subsequent compliance with the requirement cured the supposed defect in the original complaint. The records show that complainant submitted the required certification against forum shopping on 6 December 2006 when he filed his Comment/Opposition to respondent's Motion to Dismiss the present petition.

Finally, the intrinsic merit of complainant's case against respondent justifies the grant of the present petition. Respondent does not deny authorship of the threatening letter to complainant, even spiritedly contesting the charge that the letter is unethical.

Canon 19 of the Code of Professional Responsibility states that "a lawyer shall represent his client with zeal within the bounds of the law," reminding legal practitioners that a lawyer's duty is not to his client but to the administration of justice; to that end, his client's success is wholly subordinate; and his conduct ought to and must always be scrupulously observant of law and ethics.^[24] In particular, Rule 19.01 commands that 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." Under this Rule, a lawyer should not file or threaten to file any unfounded or baseless criminal case or cases against the adversaries of his client designed to secure a leverage to compel the adversaries to yield or withdraw their own cases against the lawyer's client.^[25]

In the case at bar, respondent did exactly what Canon 19 and its Rule proscribe.