

## FIRST DIVISION

[ A.C. NO. 5424, October 11, 2005 ]

**ANTONIO B. BALTAZAR, COMPLAINANT, VS. ATTY. NORBIN P. DIMALANTA, RESPONDENT.**

### D E C I S I O N

**CARPIO, J.:**

#### The Case

This is a disbarment complaint against respondent Atty. Norbin P. Dimalanta for violation of Rules 1.01, 1.03, and 10.01 of the Code of Professional Responsibility.

#### The Facts

Complainant Antonio B. Baltazar ("complainant") is the private complainant in Criminal Case No. G-4499 and Criminal Case No. G-5132 which were raffled on 1 December 1998 and 10 May 2000, respectively, to Branch 49 of the Regional Trial Court, Guagua, Pampanga ("trial court"). In those cases, the Office of the Deputy Ombudsman for Luzon ("Ombudsman") charged one Bartolome Cabrera ("Cabrera")<sup>[1]</sup> with violation of Section 3(e) of Republic Act No. 3019. Respondent Atty. Norbin P. Dimalanta ("respondent") was Cabrera's counsel. Before the Information for Criminal Case No. G-5132 was raffled to the trial court, respondent had filed with the Ombudsman a motion for the reinvestigation of Criminal Case No. G-4499.

The trial court scheduled Cabrera's arraignment in Criminal Case No. G-5132 on 6 June 2000. On that day, respondent filed a motion dated 2 June 2000 to postpone the arraignment and to be "granted leave to seek [reinvestigation] xxx, and to allow the Office of the Ombudsman to reinvestigate xxx [the] case."<sup>[2]</sup> Acting on respondent's prayer to defer the arraignment, the trial court, in its Order<sup>[3]</sup> of 6 June 2000, moved the arraignment to 11 July 2000.

On 20 June 2000, the trial court issued a follow-up Order ("20 June Order 2000") resolving respondent's motion for reinvestigation, thus:

Acting on the motion to defer arraignment and to allow reinvestigation of this case filed by Atty. Norbin P. Dimalanta, counsel for the accused, a copy of which was received by the public prosecutor on June 6, 2000 who manifested that he is leaving the matter to the sound discretion of the Honorable Court.

The Court having found the motion to be meritorious hereby grants the same and allows the accused to seek reinvestigation and the Office of the Ombudsman to conduct a reinvestigation and to submit its report on the outcome of the reinvestigation within thirty (30) days from receipt

hereof.

In the meantime, considering the proximity of the scheduled arraignment set on July 11, 2000 and upon motion of counsel for the accused, the arraignment set on that date is cancelled and reset to August 29, 2000 at 9:00 o'clock in the morning.<sup>[4]</sup> (Emphasis supplied)

For lack of a prosecutor, the trial court cancelled and re-set the hearings on 29 August 2000 and on 12 October 2000 to 27 November 2000. In the hearing of 27 November 2000, the prosecutor again failed to appear, thus the trial court issued an Order<sup>[5]</sup> re-scheduling the arraignment to 25 January 2001 after further noting that the "reinvestigation of [the] case is still pending with the Ombudsman."

In the hearing of 25 January 2001, the trial court issued the following Order ("25 January 2001 Order"):

At today's scheduled arraignment, Asst. Provincial Prosecutor Vivian T. Dabu, Atty. Norbin P. Dimalanta[,], private complainant and accused appeared. Atty. Dimalanta manifested that he has a pending motion for reconsideration of the order dated April 29, 1999 of the Ombudsman denying this (sic) earlier motion for re-investigation. According to Atty. Dimalanta he has not yet received the resolution of his motion for reconsideration, hence (sic), he moved for the resetting of the arraignment. Prosecutor Dabu while interposing no objection requested that the next arraignment be intransferrable in character as the case [has] been pending since January 1, 1998.

The motion to postpone arraignment is granted and the same is reset to March 26, 2001 at 2:00 o'clock in the afternoon. Accused is directed to take the necessary steps to secure a resolution of his motion for reconsideration before the next scheduled hearing as the arraignment will proceed, with or without any resolution from the Ombudsman.<sup>[6]</sup> (Emphasis supplied)

In his Complaint<sup>[7]</sup> dated 26 March 2001, complainant contended that respondent made false representations to the trial court to delay his client's arraignment in Criminal Case No. G-5132 because respondent never sought a reinvestigation of that case with the Ombudsman. Thus, complainant sought to hold respondent liable for violation of Rules 1.01, 1.03, and 10.01 of the Code of Professional Responsibility ("Code") which provide:

Rule 1.01 - A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

Rule 1.03 - A lawyer shall not, for any corrupt motive or interest, encourage any suit or proceeding or delay any man's cause.

Rule 10.01 - A lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead, or allow the Court to be misled by any artifice.

In his Answer,<sup>[8]</sup> respondent alleged that this administrative complaint is only one of many frivolous criminal and administrative suits complainant filed to harass him for rendering legal services to a client who is the political opponent of a relative of complainant. Respondent pointed out that complainant has no interest in Criminal Case No. G-5132 since he is not a party to that case.

The Court referred this matter to the Integrated Bar of the Philippines ("IBP") for investigation, report, and recommendation.<sup>[9]</sup>

### **The IBP Report**

In his Report dated 5 July 2004 ("Report"), Commissioner Elpidio G. Soriano III ("Commissioner Soriano") of the IBP Commission on Bar Discipline found respondent liable for "falsehood committed before [the trial court] xxx, in violation of his duties under the Code of Professional Responsibility and the lawyer's oath." Commissioner Soriano recommended respondent's suspension from the practice of law for six months. The Report reads:

As can be gleaned from the records of the instant case, respondent did lie to the trial court with respect to the pending motion for reinvestigation before the Ombudsman in Criminal Case No. G-5132.

There never was a pending motion. Initially, in filing the Motion to Defer Arraignment and To Allow Reinvestigation of the Case, he led the Court into believing that he intends to file the motion for reinvestigation, therefore the arraignment was reset. Five months after the first resetting [or on 27 November 2000], he represented to the trial court that he had already filed the subject motion and that it was still pending, thus the arraignment was again moved on (sic) another date.

On 25 January 2001, respondent betrayed himself in open court. He stated that his motion for reinvestigation was denied by the Ombudsman in an Order dated 29 April 1999 and that he has a pending motion for reconsideration of the same Order.

Respondent has raised his fooling of the trial court to a higher notch by so doing. It must be noted that the initial setting of the arraignment was on 6 June 2000. In his Motion to Defer Arraignment and To Allow Reinvestigation of the Case on the same date, he stated that he was surprised by the filing of the Information and the issuance of the Warrant of Arrest against the Accused and that he was not provided ample opportunity to file the motion for reinvestigation. His representation thereafter that there is [a] pending motion for reconsideration of a denied motion for reinvestigation dated 29 April 1999 is patently inconsistent with his earlier stance. How could the subject motion not yet filed on 6 June 2000 be denied on 29 April 1999? The trial court should have quickly spotted such discrepancy. But this is digressing on the issue at hand.

It turns out that there is indeed a motion for reinvestigation which was denied by the Ombudsman on 29 April 1999. However, this denial was with regard to an entirely different case.

The Resolution which led into filing the (sic) Information in Criminal Case [No.] G-5132, the case in issue, was denominated OMB-1-99-2381. The motion for reinvestigation was filed in OMB-1-98-1109, later filed as Criminal Case No. G-44[9]9. OMB-1-99-2381 was a complaint filed by complainant in the instant administrative case against Bartolome Cabrera, a Barangay Captain, for violation of Sec. 3(e) of Republic [Act No.] 3019 for allegedly failing to issue a Certification to File Action in Court in a Katarungang Pambarangay conciliation proceeding pending before Cabrera's office despite the fact that all efforts for settlement have failed and there was nothing to be done but to issue the aforesaid certification. On the other hand, [OMB-1-98-1109] involved the same parties but with additional respondents-spouses Manuelito Bagasina and Catalina Bagasina-charging respondents of (sic) violation of Sec. 3(e) and Sec. 4 of Republic Act [No.] 3019 for allegedly demolishing a house without authority to do the same. Clearly, even if the two cases have the same complainant and a common respondent, they cover different transactions which, by no stretch of the imagination, could be mistaken as belonging to the same case since they are based on different set of facts.<sup>[10]</sup>

The IBP Board of Governors adopted and approved the Report in its Resolution No. XVI-2004-395 dated 30 July 2004.

In his Comment to the Report filed with this Court, respondent, among others, contended for the first time that his manifestation during the hearing of 25 January 2001 that he "has a pending motion for reconsideration of the order dated 29 April 1999 xxx," as noted in the 25 January 2001 Order in Criminal Case No. G-5132, was made in and intended for Criminal Case No. G-4499. To prove his claim, respondent submitted a copy of an Order dated 25 January 2001 that the trial court issued in Criminal Case No. G-4499, certified by its Officer-In-Charge Edna P. Carlos, with the same content as the Order of the same date issued in Criminal Case No. G-5132. Respondent implied that the duplication of these Orders might have taken place because the trial court consolidated and jointly heard Criminal Case No. G-4499 and Criminal Case No. G-5132.<sup>[11]</sup>

In his Opposition to respondent's Comment, complainant countered that it was not unusual for the trial court to have issued identical Orders for Criminal Case No. G-4499 and Criminal Case No. G-5132 on 25 January 2001 as those cases, which the trial court jointly tried, had the same accused and counsel for the defense. Both cases were awaiting the Ombudsman's resolution of the defense's supposed motions for reinvestigation. Complainant added that the trial court's issuance of identical Orders are "not new" to respondent because in the hearing of 27 November 2000, the trial court also issued identical Orders for Criminal Case Nos. G-4499 and G-5132, copies of which complainant attached to his Opposition. Complainant maintained that the trial court's issuance of the identical 25 January 2001 Orders does not negate respondent's liability for dishonesty and misrepresentation because respondent "opted not to challenge" such.<sup>[12]</sup>

### **The Ruling of the Court**