

## SECOND DIVISION

[ A.C. No. 5737, October 25, 2004 ]

**FERDINAND A. CRUZ, COMPLAINANT, VS. ATTY. STANLEY CABRERA, RESPONDENT.**

### R E S O L U T I O N

**AUSTRIA-MARTINEZ, J.:**

In an administrative complaint dated July 7, 2002, Ferdinand A. Cruz charges Atty. Stanley Cabrera with misconduct in violation of the Code of Professional Responsibility.

Complainant alleges that he is a fourth year law student; since the latter part of 2001, he instituted several actions against his neighbors; he appeared for and in his behalf in his own cases; he met respondent who acted as the counsel of his neighbors; during a hearing on January 14, 2002, in one case before the Regional Trial Court, Branch 112, Pasay City, presided by Judge Caridad Cuervo, the following exchange transpired:

xxx xxx So, may we know your honor, if he is a lawyer or not?

The Court having been inhibited by the respondent from hearing the case, replied:

You are asking for my inhibition and yet you want me to rule on his appearance xxx xxx.

Thereafter, the respondent said:

Because your honor, he (pertaining to the complainant) is misrepresenting himself to be a lawyer!

To this the complainant remarked:

"Your Honor, I'm not xxx xxx."

Respondent, this time engulfed with anger in a raising voice said:

Appear ka ng appear, pumasa ka muna; x x x.

Respondent's imputations were uncalled for and the latter's act of compelling the court to ask complainant whether he is a lawyer or not was intended to malign him before the public, inasmuch as respondent knew that complainant is not a lawyer, having appeared for and in his behalf as a party litigant in prior cases; respondent's imputations of complainant's misrepresentation as a lawyer was patently with malice to discredit his honor, with the intention to threaten him not to appear anymore in

cases respondent was handling; the manner, substance, tone of voice and how the words "*appear ka ng appear, pumasa ka muna!*" were uttered were totally with the intention to annoy, vex and humiliate, malign, ridicule, incriminate and discredit complainant before the public.

Complainant claims that respondent's display of improper attitude, arrogance, misbehavior, misconduct in the performance of his duties both as a lawyer and officer of the court, before the public and the court, was a patent transgression of the very ethics that lawyers are sworn to uphold in their dealings with society and corresponding appropriate penalty or sanctions for the said administrative violations should be imposed on the respondent.

In his Comment, respondent contends that the complaint filed against him is a vicious scheme to dissuade him from appearing as counsel for the Mina family against whom complainant had filed several civil and criminal cases including him to further complainant's illegal practice of law; complainant's complaint occurred during a judicial proceeding wherein complainant was able to represent himself considering that he was appearing in *barong tagalog* thus the presiding judge was misled when she issued an order stating "[i]n today's hearing both lawyers appeared;" because of which, respondent stated: "Your honor I would like to manifest that this counsel (referring to complainant) who represents the plaintiff in this case is not a lawyer," to which complainant replied: "The counsel very well know that I am not yet a lawyer;" the reason he informed the court that complainant is not a lawyer was because the presiding judge did not know that complainant is not a lawyer and complainant did not inform the presiding judge that he is not a lawyer when he stated: "for the plaintiff your honor;" he stated "*pumasa ka muna*" out of indignation because of complainant's temerity in misrepresenting himself as lawyer; it is surprising that the City Prosecutor of Pasay City filed a complaint for oral defamation against him considering that in a precedent case the Supreme Court stated: "It is a settled principle in this jurisdiction that statements made in the course of judicial proceedings are absolutely privileged (*Navarrete vs. Court of Appeals*, 325 SCRA 540);" in another malicious prosecution being perpetuated by the complainant against the Mina family pending before Judge Priscilla Mijares of RTC Branch 108, Pasay City, they were able to prohibit the appearance of complainant as counsel for himself as authenticated by an Order of Judge Priscilla Mijares which allegedly stated among other; to wit:

In connection with Ferdinand A. Cruz's motion to appear as counsel, the motion is likewise denied, movant not having satisfied the requirements and conditions under Rule 138-A, Sections 1 and 2.

Respondent alleges that when complainant filed an administrative case against Judge Priscilla Mijares when said Judge stated in *Tagalog* in open court "*Hay naku masama yung marunong pa sa Huwes! OK?*" the same was dismissed by the Honorable Court's Third Division which stated among others: "That the questioned remarks of respondent were uttered more out of frustration and in reaction to complainant's actuations and taking into account that complainant is not yet a lawyer but was already lecturing the court on a matter which is not even a point of discussion was sheer arrogance on the part of the complainant." Respondent prays that the complaint against him be dismissed for lack of merit.

The administrative case was referred to the Integrated Bar of the Philippines (IBP)

for investigation, report and recommendation.

In a report, dated March 4, 2004, IBP Commissioner Lydia A. Navarro recommended respondent's suspension from the practice of law for a period of three months for violating Rule 8.01 of the Code of Professional Responsibility which provides:

A lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper.

In her report, Commissioner Navarro stated:

After going over the evidence submitted by the parties, the undersigned noted that respondent's averment that the utterances he made in open court is (sic) privileged communication does not hold water for the same was (sic) not relevant to the issue of the case in question under trial before the said court.

Respondent did not refute the fact that the same utterances he made in open court against the complainant had been the basis for his indictment of Oral Defamation and later Unjust Vexation under Criminal Cases Nos. 02-1031 and No. 02-2136 respectively, pending trial before MTC Branch 45, Pasay City.

Likewise respondent did not refute complainant's allegation that in 1979 he was held in contempt and was not allowed to practice law for seven years by the Supreme Court in the administrative case filed against him by Emilia E. Andres on December 14, 1979 docketed as A.M. L-585 for his fondness in using contumacious language in his dealing with others.

From the facts obtaining, it is apparent that the utterance hurled by the respondent in the manner, substance and tone of his voice which was not refuted by him "*that appear ka ng appear, pumasa ka muna*" in whatever manner it was uttered are in itself not only abusive but insulting specially on the part of law students who have not yet taken nor passed the bar examination required of them.

Respondent should have been more discreet and cautious in informing the court if it was his purpose relative to complainant's appearance in court; although the latter appeared only in his behalf but not for others if he had complied with the requirements of Rule 138 (Sections 1 and 3) of the Rules of Court.

Respondent should have been more temperate in making utterances in his professional dealings so as not to offend the sensitivities of the other party as in this case

On April 16, 2004, the IBP Board of Governors passed a Resolution to annul and set aside the recommendation of the investigating commissioner and to approve the dismissal of the case for lack of merit.

Prefatorily, we note that the IBP Board of Governors failed to observe the procedural requirements of Sec. 12 of Rule 139-B of the Rules of Court on review and decision by the Board of Governors which states: