

SECOND DIVISION

[A.C. No. 4634, September 24, 1997]

**JESUS CABARRUS, JR., COMPLAINANT, VS. JOSE ANTONIO
BERNAS, RESPONDENTS.
D E C I S I O N**

TORRES, JR., J.:

On August 30, 1996, Mr. Jesus Cabarrus, Jr. filed an administrative complaint for disbarment against Atty. Jose Antonio Bernas for alleged violations of Article 172 of the Revised Penal Code and Code of professional Responsibility. In his complaint-affidavit ^[1] dated August 12, 1996, complainant alleged as follows:

A. That on April 16, 1996, respondent Ramon B. Pascual, Jr., subscribed under oath before Marie Lourdes T. Sia Bernas, a notary public in Makati City, wife of lawyer Jose Antonio Bernas, a verification and certification of non-forum shopping which was appended to a complaint for reconveyance of property and damages, denominated as Civil Case No. 65646, filed before the Regional Trial Court in National Capital Region, RTC, which case was raffled to RTC Branch 159 in Pasig City. A photocopy of said complaint is hereto attached and marked as Annexes (sic) A, A-1, A-3, A-4, A-5 and A-6;

B. That as basis for the instant complaint for falsification of public document, I am hereto quoting verbatim, the text (sic) of Annex A-6, the verification and certification of non-forum shopping which states:

Ramon B. Pascual, Jr., under oath, depose and states:

He is the plaintiff in this case, and certify that he caused the preparation of the foregoing pleading, the content of which are true to his personal knowledge and that he has not commenced any other action or proceeding involving the same issues in any court, including the Supreme Court, the Court of Appeals, or any other tribunal or agency. If he should learn that a similar action of (sic) proceeding has been filed or is pending before the Supreme Court or any other Tribunal agency, he undertakes to report to (sic) that the fact within Five (5) days from the notice to this notice (sic) to this Honorable Court." Underscoring supplied.

C. That the cause of action relied upon by the respondents in Civil Case No. 65646 is fraud, facilitated by forgery as gleaned from paragraph 15, 16, and 22;

D. That contrary to the tenor, import and meaning (sic) of the allegation under 1-B of the instant complaint, respondent and his counsel Jose Antonio Bernas caused the preparation and filing of a criminal complaint

for falsification of a public document on April 11, 1996, (three days before the filing of the aforesaid Civil Case) at the AOED of the National Bureau of Investigation if (sic) Taff (sic) Ave., a xerox copy of said complaint is hereto attached and marked as Annex "B".

D-1. That as stated in Annex "B", the gravamen of the affidavit complaint of the respondent is forgery, the same legal issue in Civil Case No. 65646;

D-2. That as early as August 14, 1995, respondent counsel, Jose Antonio Bernas filed a written complaint at the NBI for the same cause of action which was reiterated in another letter submitting to the NBI standard specimen signatures dated October 1995, copies of said letter complaint are hereto attached and marked as Annexes (sic) "C".

E. That respondent Ramon B. Pascual, Jr., on the basis of Annexes A, B, C, D, inclusive of submarkings knowingly subverted and perverted the truth when he falsify certified (sic) and verified under oath in the verification and certification of non-forum shopping, that:

"He has not commenced any other action or proceeding involving the same issues in any court, including the Supreme Court, the Court of Appeals, or any other Tribunal or agency." Where verification-certification was placed under oath and was conveniently notarized by the wife of the counsel of respondent in both cases at Branch 159 of the RTC in Pasig and at the NBI, an agency within the ambit (sic) and purview of the circulus (sic) of the Supreme Court prohibiting forum shopping.

F. That Jose Antonio Bernas, the counsel on record of the respondents in Civil Case No. 65646 is the same lawyer who instigated a criminal complaint at the NBI for forgery and respondents themselves conspired and confabulated with each other in facilitating and insuring the open, blatant and deliberate violation of Art. 172 of the Revised Penal Code which states:

Art. 172. Falsification by private individual and use of falsified documents.- The penalty of prison correctional in its medium and maximum periods and a fine of not more than p 5,000 pesos shall be imposed upon:

1. Any private individual who shall commit any of the falsifications enumerated in the next preceding article in any public or official document or letter of exchange (sic) or any other kind of commercial documents; and
2. Any person who, to the damage of the third party, or with the intent to cause such damage, shall in any private document commit any of the acts of falsification enumerated in the next preceding article.

Any person who shall knowingly introduce in evidence in any judicial proceeding or the damage of another or who, with the intent to cause such damage, shall use any

of the false documents embraced in the next preceding article, or any of the foregoing subdivisions of this article, shall be punished by the penalty next lower in degree.

G. That Atty. Jose Antonio Bernas should be disbarred for having instigated abetted and facilitated the perversion and subversion of truth in the said verification and certification of non-forum shopping. Contrary to Canon 1, Rule 1.01, 1.02, Canon 3, 3.01, Canon 10 of the code of Professional responsibility for Lawyers, the pertinent provisions of which are herein below quoted and a copy of said code is hereto attached and marked as Annex "E";

"CANON 1. A. LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCESSES.

Rule 1.01 - A lawyer shall not engage in lawful, dishonest, immoral or deceitful (sic) conduct.

Rule 1.02 - A lawyer shall not counsel or abet activities aimed (sic) at defiance of the law or at lessening confidence in the legal system.

CANON 3 A. LAWYER IN MAKING KNOWN HIS LEGAL SERVICES SHALL USE ONLY TRUE, HONEST, FAIR, DIGNIFIED AND OBJECTIVE INFORMATION OF (sic) STATEMENT OF FACTS.

Rule 3.01 - A lawyer shall not use or permit the use of any false, fraudulent, misleading, deceptive, undignified, self-laudatory or unfair statement or claim regarding his qualified (sic) or legal services.

CANON 10. A LAWYER OWES CANDOR, FAIRNESS AND GOOD FAITH TO THE COURT."

In his Comment, ^[2] respondents Jose Antonio Bernas avers that he has not committed forum shopping because the criminal action is not an action that involves the same issue as those in the civil action and both suits can exist without constituting forum shopping so long as the civil aspect has not yet been prosecuted in the criminal case. He emphasized that forum shopping only exist when identical reliefs are issued by the same parties in multiple fora.

In his Supplemental Comment, ^[3] respondent further contends that neither he or his client Pascual has commenced any criminal action. Pascual merely requested the NBI to assist in the investigation or prosecution, and left it to the NBI to determine whether the filing of an endorsement to the prosecutor, who would determine probable cause, would be appropriate. It was only upon request of the NBI that he assisted Ramon Pascual in drafting an affidavit-complaint for falsification of public documents against complainant. Likewise, respondent by counsel reiterates that the letter transmitted to the NBI cannot constitute an action or proceeding because the NBI's functions are merely investigatory and informational in nature. NBI has no prosecutorial functions or quasi-judicial power and is incapable of granting relief or