

THIRD DIVISION

**[A.C. NO. 5798 (FORMERLY CBD NO. 01-902),
January 20, 2005]**

**ALEX B. CUETO, COMPLAINANT, VS. ATTY. JOSE B. JIMENEZ, JR.,
RESPONDENT.**

R E S O L U T I O N

CORONA, J.:

Before us is a complaint^[1] for disciplinary action against Atty. Jose Jimenez, Jr. filed by Engr. Alex B. Cueto with the Integrated Bar of the Philippines (IBP), Commission on Bar Discipline.

Engr. Alex Cueto alleged that sometime in October 1999 he engaged the services of respondent as notary public, the latter being the father of the owner of the building subject of the Construction Agreement^[2] to be notarized. He was then accompanied by a certain Val Rivera, the building administrator of respondent's son Jose Jimenez III.

After notarizing the agreement, respondent demanded P50,000 as notarial fee. Despite his surprise as to the cost of the notarial service, complainant informed respondent that he only had P30,000 in cash. Respondent persuaded complainant to pay the P30,000 and to issue a check for the remaining P20,000. Being unfamiliar with the cost of notarial services, complainant paid all his cash^[3] and issued a Far East Bank check dated December 28, 1999 for the balance.

Before the maturity date of the check, complainant requested respondent not to deposit the same for lack of sufficient funds. He also informed respondent that the latter's son Jose Jimenez III had not yet paid his services as general contractor. Still, respondent deposited the check which was consequently dishonored for insufficient funds. Meanwhile, the P2,500,000 check issued by respondent's son to complainant as initial payment pursuant to the Construction Agreement was itself dishonored for having been drawn against a closed account.

Subsequently, Atty. Jimenez lodged a complaint for violation of BP 22 against Cueto before the City Prosecutor's Office in Angeles City. The criminal case was tried in the Metropolitan Trial Court of Angeles City, Branch I.

In the meantime, Cueto filed his own administrative complaint against Jimenez on November 16, 2001. He alleged that Jimenez violated the Code of Professional Responsibility and Canons of Professional Ethics when he filed the criminal case against Cueto so he could collect the balance of his notarial fee.

Pursuant to Rule 139-B, Section 6 of the Rules of Court, respondent Jimenez was required to answer the complaint filed against him.^[4] Despite notice, however,

respondent failed to file his answer and to appear before the IBP Commission on Bar Discipline. After hearing the case *ex-parte*, the case was deemed submitted for resolution.^[5]

In its report^[6] dated April 21, 2002, the IBP Commission on Bar Discipline found respondent guilty of violating Canon 20, Rule 20.4 of the Code of Professional Responsibility and recommended that Atty. Jose B. Jimenez, Jr. be reprimanded.

On June 29, 2002, the Board of Governors passed a resolution^[7] adopting and approving the report and recommendation of the Investigating Commissioner:^[8]

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution/Decision as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and in view of respondent's violation of Canon 20, Rule 20.4 of the Code of Professional Responsibility, respondent is hereby reprimanded.

Complainant's claim that respondent's P50,000 notarial fee was exorbitant is debatable. As confirmed by the IBP, it is a recognized legal practice in real estate transactions and construction projects to base the amount of notarial fees on the contract price. Based on the amount demanded by respondent, the fee represented only 1% of the contract price of P5,000,000. It cannot be said therefore that respondent notary demanded more than a reasonable recompense for his service.

We are also convinced that the two contracting parties implicitly agreed on the cost of Jimenez's notarial service. It was Cueto's responsibility to first inquire how much he was going to be charged for notarization. And once informed, he was free to accept or reject it, or negotiate for a lower amount. In this case, complainant's concern that the other party to the construction agreement was the son of respondent notary and that his non-availing of respondent's service might jeopardize the agreement, was purely speculative. There was no compulsion to avail of respondent's service. Moreover, his failure to negotiate the amount of the fee was an implicit acquiescence to the terms of the notarial service. His subsequent act of paying in cash and in check all the more proved it.

However, we agree with the IBP that respondent's conduct in filing a criminal case for violation of BP 22 against complainant (when the check representing the P20,000 balance was dishonored for insufficient funds) was highly improper.

Canon 20, Rule 20.4 of the Code of Professional Responsibility mandates that "[a] lawyer shall avoid controversies with clients concerning his compensation and shall resort to judicial action only to prevent imposition, injustice or fraud." Likewise, in Canon 14 of the Canons of Professional Ethics it states that, "[c]ontroversies with clients concerning compensation are to be avoided by the lawyer so far as shall be compatible with his self-respect and with his right to receive reasonable recompense for his service; and lawsuits with the clients should be resorted to only to prevent injustice, imposition or fraud."

There was clearly no imposition, injustice or fraud obtaining in this case to justify the legal action taken by respondent. As borne out by the records, complainant