

## FIRST DIVISION

[ A.C. No. 11600, June 19, 2017 ]

**ROMULO DE MESA FESTIN, COMPLAINANT, V. ATTY. ROLANDO V. ZUBIRI, RESPONDENT.**

### D E C I S I O N

**PERLAS-BERNABE, J.:**

This administrative case stemmed from an affidavit-complaint<sup>[1]</sup> filed by complainant Romulo De Mesa Festin (complainant) against respondent Atty. Rolando V. Zubiri (respondent) before the Integrated Bar of the Philippines (IBP) for gross violations of the Code of Professional Responsibility (CPR).

#### The Facts

Complainant alleged that he was elected as Mayor of the Municipality of San Jose, Occidental Mindoro in the May 2013 elections. His opponent, Jose Tapales Villarosa (Villarosa), filed an election protest against him before the Regional Trial Court of San Jose, Occidental Mindoro, Branch 46 (RTC).<sup>[2]</sup> After deciding in favor of Villarosa, the RTC issued an Order<sup>[3]</sup> dated January 15, 2014 (January 15, 2014 Order), granting his motion for execution pending appeal, viz.:

WHEREFORE, the Motion for Execution Pending Appeal is GRANTED.

The OIC-Branch Clerk of Court [(COC)] is hereby directed to issue a Writ of Execution Pending Appeal **after the lapse of twenty (20) working days** to be counted from the time [complainant's] counsel receives a copy of this Special Order, **if no restraining order or status quo order is issued** pursuant to Section 11 (b),<sup>[4]</sup> Rule 14 of A.M. No. 07-4-15-SC.<sup>[5]</sup> (Emphasis supplied)

Distressed, complainant filed a petition for *certiorari*<sup>[6]</sup> before the Commission on Elections (COMELEC), seeking a Temporary Restraining Order (TRO) against the issuance of the writ of execution pending appeal.<sup>[7]</sup> In an Order<sup>[8]</sup> dated February 13, 2014, the COMELEC issued a TRO, directing Hon. Gay Marie F. Lubigan-Rafael (RTC Judge), in her official capacity as Presiding Judge of the RTC, to cease and desist from enforcing the January 15, 2014 Order, effective immediately.<sup>[9]</sup> Accordingly, the RTC issued another Order<sup>[10]</sup> dated February 25, 2014 (February 25, 2014 Order), pertinent portion of which reads:

In view thereof, the OIC-Branch [COC] is directed **NOT TO ISSUE** a Writ of Execution in accordance with the [January 15, 2014] Order until further notice.<sup>[11]</sup>

Despite the TRO and the RTC's February 25, 2014 Order, respondent, as counsel of Villarosa, filed five (5) manifestations<sup>[12]</sup> addressed to the COC insisting on the writ's issuance. Notably, he did not serve copies of these manifestations to the other party.<sup>[13]</sup>

In these manifestations, respondent claimed that his client received the RTC's January 15, 2014 Order on January 18, 2014, and counting from said date, the twenty-day period ended on February 12, 2014.<sup>[14]</sup> Since the COMELEC only issued the TRO on February 13, 2014, the TRO no longer had any effect. Respondent further asserted that the TRO was addressed only to the RTC Judge, and not to the COC; therefore, the COC is not bound by the TRO. For these reasons, respondent insisted that the COC could legally issue the writ of execution pending appeal.<sup>[15]</sup>

The COC eventually issued a Writ of Execution Pending Appeal addressed to the sheriff. However, complainant only found out about respondent's manifestations when the sheriff attempted to serve the writ on him.<sup>[16]</sup> Soon thereafter, complainant filed the disbarment complaint.

In his complaint, complainant argued that respondent violated his ethical duties when he misled and induced the COC to defy lawful orders - particularly, the COMELEC's TRO and the RTC's February 25, 2014 Order.<sup>[17]</sup> As a result, respondent allegedly violated Canons 1, 10, 15, and 19 of the CPR.<sup>[18]</sup>

In his answer,<sup>[19]</sup> respondent claimed that, *first*, since the case records had been transmitted to the COMELEC on January 31, 2014, the RTC was divested of jurisdiction over the case; therefore, it had no more power to issue the February 25, 2014 Order.<sup>[20]</sup> Respondent put forward the same reason for filing the five manifestations with the COC instead of the RTC Judge.<sup>[21]</sup> *Second*, the manifestations contained no misleading statements or factual deviations. He merely stated in his manifestations his honest belief that the twenty-day period had already lapsed when the COMELEC issued its TRO; hence, it no longer had any binding effect. He explained that the filing of manifestations to highlight his position did not violate any rule.<sup>[22]</sup> *Third*, he allegedly filed those manifestations pursuant to his duty under Canon 18 of the CPR to represent his client with competence and diligence.<sup>[23]</sup>

### **The IBP's Report and Recommendation**

In a Report and Recommendation<sup>[24]</sup> dated September 1, 2014, the Investigating Commissioner recommended that respondent be suspended from the practice of law for six (6) months.<sup>[25]</sup> He observed that by filing manifestations instead of motions, respondent was able to disregard the rule that motions shall be served on the other party and shall contain a notice of hearing. In this regard, the Investigating Commissioner noted that a manifestation merely informs the court about a certain matter involving the case, and does not require affirmative action by the court. In the present case, however, the manifestations filed by respondent were actually motions as these contained arguments to support his prayer for the issuance of a writ of execution pending appeal. Moreover, the Investigating Commissioner also held that respondent acted in bad faith when he convinced the COC to disregard the COMELEC's TRO. He pointed out that when the TRO enjoins the court, it includes the judge and all officers and employees of the court, including the clerk of court.

Hence, respondent was unfair to the other party and employed deceit when he filed the manifestations. As a result, the other party was not afforded due process by being deprived of an opportunity to oppose the manifestations.<sup>[26]</sup>

In a Resolution<sup>[27]</sup> dated December 14, 2014, the IBP Board of Governors (IBP Board) adopted and approved the Report and Recommendation of the Investigation Commissioner.

Respondent moved for reconsideration,<sup>[28]</sup> which was, however, denied in a Resolution<sup>[29]</sup> dated May 28, 2016.

On October 10, 2016, respondent filed a petition for review<sup>[30]</sup> before the Court purportedly pursuant to the procedure laid out in *Ramientas v. Reyala (Ramientas)*.<sup>[31]</sup>

### **The Issue Before the Court**

The core issue in this case is whether or not respondent should be held administratively liable for the acts complained of.

### **The Court's Ruling**

#### **I.**

At the outset, the Court deems it proper to clarify that respondent's filing of the instant petition for review does not conform with the standing procedure for the investigation of administrative complaints against lawyers.

Section 12 (b) and (c) of Rule 139-B of the Rules of Court, as amended by Bar Matter No. 1645 dated October 13, 2015,<sup>[32]</sup> states:

Section 12. *Review and **Recommendation** by the Board of Governors.* -

x x x x

b) After its review, the Board, by the vote of a majority of its total membership, shall **recommend** to the Supreme Court the dismissal of the complaint or the imposition of disciplinary action against the respondent. The Board shall issue a resolution setting forth its findings and recommendations, clearly and distinctly stating the facts and the reasons on which it is based. The resolution shall be issued within a period not exceeding thirty (30) days from the next meeting of the Board following the submission of the Investigator's report.

c) **The Board's resolution, together with the entire records and all evidence presented and submitted**, shall be **transmitted to the Supreme Court for final action** within ten (10) days from issuance of the resolution.

x x x x (Emphases supplied)

Under the old rule, the IBP Board had the power to "issue a decision" if the lawyer complained of was either exonerated or meted a penalty of "less than suspension of disbarment." In this situation, the case would be deemed terminated unless an interested party files a petition before the Court.<sup>[33]</sup> The case of *Ramientas*,<sup>[34]</sup>

which was cited as respondent's basis for filing the present petition for review, was pronounced based on the old rule.<sup>[35]</sup>

In contrast, under the amended provisions cited above, the IBP Board's resolution is merely recommendatory regardless of the penalty imposed on the lawyer. The amendment stresses the Court's authority to discipline a lawyer who transgresses his ethical duties under the CPR. Hence, any final action on a lawyer's administrative liability shall be done by the Court based on the entire records of the case, including the IBP Board's recommendation, without need for the lawyer-respondent to file any additional pleading.

On this score, respondent's filing of the present petition for review is unnecessary. Pursuant to the current rule, the IBP Board's resolution and the case records were forwarded to the Court. The latter is then bound to fully consider all documents contained therein, regardless of any further pleading filed by any party - including respondent's petition for review, which the Court shall nonetheless consider if only to completely resolve the merits of this case and determine respondent's actual administrative liability.

## **II.**

After a judicious review of the case records, the Court agrees with the IBP that respondent should be held administratively liable for his violations of the CPR. However, the Court finds it proper to impose a lower penalty.

Canon 1 of the CPR mandates lawyers to uphold the Constitution and promote respect for the legal processes.<sup>[36]</sup> Additionally, Canon 8 and Rule 10.03, Canon 10 of the CPR require lawyers to conduct themselves with fairness towards their professional colleagues, to observe procedural rules, and not to misuse them to defeat the ends of justice. These provisions read thus:

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

x x x x

CANON 8 - A LAWYER SHALL CONDUCT HIMSELF WITH COURTESY, FAIRNESS AND CANDOR TOWARDS HIS PROFESSIONAL COLLEAGUES, AND SHALL AVOID HARASSING TACTICS AGAINST OPPOSING COUNSEL

x x x x

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

x x x x

Rule 10.03 - A lawyer shall observe the rules of procedure and shall not misuse them to defeat the ends of justice.

Contrary to these edicts, respondent improperly filed the five (5) motions as "manifestations" to sidestep the requirement of notice of hearing for motions. In effect, he violated his professional obligations to respect and observe procedural