

## EN BANC

[ A.C. No. 11121, September 13, 2016 ]

**DELIA LIM, COMPLAINANT, VS. ATTY. AQUILINO MEJICA,  
RESPONDENT.**

### DECISION

**REYES, J.:**

Before the Court is an administrative complaint<sup>[1]</sup> for disbarment filed by complainant Delia Lim (Lim) charging respondent Atty. Aquilino Mejica (Atty. Mejica) with violation of Rule 1.03 of Canon 1, Rule 12.02 of Canon 12 and Rule 7.03 of Canon 7 of the Code of Professional Responsibility (CPR).

#### The Facts

On July 16, 2008, Atty. Mejica filed a criminal action for grave oral defamation against Lim, then incumbent Vice Mayor of Oras, Eastern Samar, before the Office of the Assistant Provincial Prosecutor (OAPP) of Oras, Eastern Samar, docketed as I.S. No. 08-90-0. He alleged that Lim uttered against him the following slanderous words at the Session Hall of the Sangguniang Bayan of Oras: "*HI AGUS BALDADO NAG KIIHA KAN ATTY. AKI MEJICA HA IBP UG YANA HI ATTY. MEJ[I]CA SUSPENDIDO HIT IYA KA ABOGADO SAKOP HIN UNOM KA BULAN, IPAN NUMAT NIYO*" (Mr. Agus Baldado filed a case against Atty. Mejica before the Integrated Bar of the Philippines (IBP) and now Atty. Mejica is suspended from practice of his profession as a lawyer for a period of six (6) months, you relay this information).<sup>[2]</sup>

On February 19, 2009, acting Provincial Prosecutor Cornelio M. Umil II issued a Resolution<sup>[3]</sup> dismissing the complaint of Atty. Mejica for lack of probable cause. A Motion for Reconsideration<sup>[4]</sup> (MR) was filed, but the same was denied in a Resolution<sup>[5]</sup> dated May 20, 2009.

However, while Atty. Mejica's MR was still pending before the Office of the Provincial Prosecutor (OPP), he filed on March 31, 2009, for the second time, the same complaint<sup>[6]</sup> before the Municipal Circuit Trial Court (MCTC) of Oras, Eastern Samar, docketed as Criminal Case No. (0)2009-03.

On July 6, 2009, the MCTC issued an Order<sup>[7]</sup> dismissing the complaint of Atty. Mejica on the ground that the same had already prescribed. An MR was filed but the same was denied in an Order<sup>[8]</sup> dated September 14, 2009.

Consequently, Lim filed the instant case alleging that Atty. Mejica deliberately committed forum shopping when he filed the same complaint with the same attachments with the MCTC during the pendency of his MR to the dismissal of his complaint before the OPP.<sup>[9]</sup>

On November 16, 2009, the Commission on Bar Discipline (CBD) of the IBP issued an Order<sup>[10]</sup> directing Atty. Mejica to submit his answer to Lim's complaint within 15 days from receipt of the order.

In his Answer,<sup>[11]</sup> Atty. Mejica argued that the filing of the case before the MCTC pending the resolution of his MR before the OPP was made in good faith. He argued that he did not know that an oral defamation case may be filed directly with the MCTC.<sup>[12]</sup>

According to Atty. Mejica, he consulted his friend, Atty. Emmanuel C. Apelado, a Public Attorney's Office lawyer, when he found out that the person drafting the pleadings of Lim was the same person who was handling the case in the OPP. He alleged that he was advised, that an oral defamation case is not subject to preliminary investigation and as such he could file the same directly with the MCTC.<sup>[13]</sup>

Also, he argued that since the criminal complaint was filed before the OAPP, its resolution for probable cause would not be a bar for the court's judicial determination of probable cause considering that in case of oral defamation, preliminary investigation is not required.<sup>[14]</sup>

On August 31, 2010, the IBP-CBD issued a Notice<sup>[15]</sup> directing the parties to appear for a mandatory conference. During the mandatory conference, however, only Lim and her counsel appeared, while Atty. Mejica was absent.<sup>[16]</sup>

On January 10, 2011, the IBP-CBD issued an Order<sup>[17]</sup> terminating the mandatory conference and directing both parties to submit their respective position papers within a non-extendible period of 30 days upon receipt of the said order.

### **Recommendation and Resolutions of the IBP**

On November 17, 2011, the IBP-CBD issued a Report and Recommendation<sup>[18]</sup> finding Atty. Mejica liable for violating Rule 12.02 of Canon 12 of the CPR, and recommended that he be suspended for a period of six (6) months. Subsequently, the Report and Recommendation of the IBP-CBD was adopted and approved by the IBP Board of Governors in a Resolution<sup>[19]</sup> dated June 20, 2013. The IBP Board of Governors, however, modified the penalty by reducing the suspension to three (3) months.

On October 23, 2013, an MR<sup>[20]</sup> was filed by Atty. Mejica but the same was denied by the IBP Board of Governors in a Resolution<sup>[21]</sup> dated September 27, 2014. The IBP Board of Governors, however, after considering this Court's previous sanctions imposed against Atty. Mejica, increased his suspension to five (5) years.

### **The Issue**

Essentially, the case directly poses to the Court the question of whether the instant disbarment complaint constitutes a sufficient basis to suspend Atty. Mejica from the

practice of law for five (5) years for violation of the CPR.

### **Ruling of the Court**

#### ***There is no violation of the rule against non-forum shopping***

"There is forum shopping whenever as a result of an adverse opinion in one forum, a party seeks a favorable opinion (other than by appeal or *certiorari*) in another."<sup>[22]</sup>  
"The test for determining forum shopping is whether in the two (or more) cases pending, there is an identity of parties, rights or causes of action, and relief sought."<sup>[23]</sup>

In *Yu v. Lim*,<sup>[24]</sup> the Court discussed the requisites of forum shopping as follows:

Forum shopping exists when the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in another. *Litis pendentia* requires the concurrence of the following requisites: (1) identity of parties, or at least such parties as those representing the same interests in both actions; (2) identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and (3) identity with respect to the two preceding particulars in the two cases, such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case.<sup>[25]</sup> (Citation omitted and italics in the original)

In the present case, the Court finds that the second requisite of forum shopping does not exist since there is no identity of relief in I.S. No. 08-90-0 filed before the OAPP of Oras, Eastern Samar and in Criminal Case No. (0)2009-03 filed before the MCTC of the same place.

In I.S. No. 08-90-0, the complaint seeks for the finding by the prosecutor of probable cause against Lim for Grave Oral Defamation so that the latter could be held for trial. Meanwhile, in Criminal Case No. (0)2009-03, the complaint seeks for the conviction of Lim.

In *Co v. Lim, et al.*,<sup>[26]</sup> the Court, for the purpose of determining the existence of forum shopping, held that the determination made by the Secretary of Justice on whether there is a *prima facie* case for the prosecution of the case is distinct from the judicial determination of the RTC that there is no probable cause for the continued hearing of the criminal case. Moreover, the Court held that these are two distinct actions which should be independently assailed. The former is pursuant to the powers and functions of the Department of Justice as provided for under the Revised Administrative Code while the latter is in accord to the judicial powers conferred by Section 1, Article VIII of the 1987 Constitution.<sup>[27]</sup>

Applying the foregoing, it is clear that in the present case, the exercise of the OPP of its investigative power to determine the existence of probable cause to the complaint filed by Arty. Mejica is likewise different and distinct from the power of the court to hold Lim for trial for the offense charged.

Moreover, it is well settled that "[w]hat is pivotal in determining whether forum

shopping exists or not is the vexation caused the courts and parties-litigants by a party who asks different courts and/or administrative agencies to rule on the same or related cases and/or grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different courts and/or administrative agencies upon the same issues."<sup>[28]</sup> In the present case, however, there is no sufficient evidence to prove that Atty. Mejica deliberately filed the two complaints for such purpose. As aptly explained by him, the same was a result of a mere inadvertence and that the same was immediately rectified upon coming to his knowledge.

Assuming, however, that there is identity of relief, the complaint pending before the OPP cannot be considered for purposes of determining if there was forum shopping. The power of the prosecutor, pursuant to Section 3, Chapter 1, Title III, Book IV of the Administrative Code of 1987, is only investigatory in character. It states:

Section 3. *Powers and Functions.* To accomplish its mandate, the Department shall have the following powers and functions:

x x x x

(2) Investigate the commission of crimes, prosecute offenders and administer the probation and correction system.

x x x x

Clearly, the prosecutor's resolution does not constitute as a valid and final judgment because his duty, should he find probable cause to prosecute the respondent, is to file the appropriate information before the proper court.

As to the institution of the criminal action, Section 1, Rule 110 of the Revised Rules of Criminal Procedure states:

Section 1. *Institution of criminal actions.* — Criminal actions shall be instituted as follows:

(a) For offenses where a preliminary investigation is required pursuant to Section 1 of Rule 112, by filing the complaint with the proper officer for the purpose of conducting the requisite preliminary investigation.

(b) For all other offenses, by filing the complaint or information directly with the Municipal Trial Courts and Municipal Circuit Trial Courts, or the complaint with the office of the prosecutor. In Manila and other chartered cities, the complaints shall be filed with the office of the prosecutor unless otherwise provided in their charters.

The institution of the criminal action shall interrupt the running period of prescription of the offense charged unless otherwise provided in special laws.

Moreover, Section 1, Rule 112 of the Revised Rules of Criminal Procedure, when preliminary investigation shall be conducted, provides: