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[A.M. No. 10-10-4-SC, March 08, 2011]

RE: LETTER OF THE UP LAW FACULTY ENTITLED "RESTORING INTEGRITY: A STATEMENT BY THE FACULTY OF THE UNIVERSITY OF THE PHILIPPINES COLLEGE OF LAW ON THE ALLEGATIONS OF PLAGIARISM AND MISREPRESENTATION IN THE SUPREME COURT"

D E C I S I O N

LEONARDO-DE CASTRO, J.:

For disposition of the Court are the various submissions of the 37 respondent law professors[1] in response to the Resolution dated October 19, 2010 (the Show Cause Resolution), directing them to show cause why they should not be disciplined as members of the Bar for violation of specific provisions of the Code of Professional Responsibility enumerated therein.

At the outset, it must be stressed that the Show Cause Resolution clearly dockets this as an administrative matter, not a special civil action for indirect contempt under Rule 71 of the Rules of Court, contrary to the dissenting opinion of Associate Justice Maria Lourdes P. A. Sereno (Justice Sereno) to the said October 19, 2010 Show Cause Resolution. Neither is this a disciplinary proceeding grounded on an allegedly irregularly concluded finding of indirect contempt as intimated by Associate Justice Conchita Carpio Morales (Justice Morales) in her dissenting opinions to both the October 19, 2010 Show Cause Resolution and the present decision.

With the nature of this case as purely a bar disciplinary proceeding firmly in mind, the Court finds that **with the exception of one respondent whose compliance was adequate and another who manifested he was not a member of the Philippine Bar**, the submitted explanations, being mere denials and/or tangential to the issues at hand, are decidedly **unsatisfactory**. The proffered defenses even more urgently behoove this Court to call the attention of respondent law professors, who are members of the Bar, to the relationship of their duties as such under the Code of Professional Responsibility to their civil rights as citizens and academics in our free and democratic republic.

The provisions of the Code of Professional Responsibility involved in this case are as follows:

> CANON 1 -- A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and legal processes.
>
> > RULE 1.02 - A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system.

CANON 10 - A lawyer owes candor, fairness and good faith to the court.

> Rule 10.01 - A lawyer shall not do any falsehood, nor consent to the doing of any in court; nor shall he mislead, or allow the Court to be misled by any artifice.
>
> Rule 10.02 - A lawyer shall not knowingly misquote or misrepresent the contents of paper, the language or the argument of opposing counsel, or the text of a decision or authority, or knowingly cite as law a provision already rendered inoperative by repeal or amendment, or assert as a fact that which has not been proved.
>
> Rule 10.03 - A lawyer shall observe the rules of procedure and shall not misuse them to defeat the ends of justice.

CANON 11 -- A lawyer shall observe and maintain the respect due to the courts and to judicial officers and should insist on similar conduct by others.

> RULE 11.05 A lawyer shall submit grievances against a Judge to the proper authorities only.

CANON 13 -- A lawyer shall rely upon the merits of his cause and refrain from any impropriety which tends to influence, or gives the appearance of influencing the court.

Established jurisprudence will undeniably support our view that when lawyers speak their minds, they must ever be mindful of their sworn oath to observe ethical standards of their profession, and in particular, avoid foul and abusive language to condemn the Supreme Court, or any court for that matter, for a decision it has rendered, **especially during the pendency of a motion for such decision's reconsideration**. The accusation of plagiarism against a member of this Court is not the real issue here but rather this plagiarism issue has been used to deflect everyone's attention from the actual concern of this Court to determine by respondents' explanations whether or not respondent members of the Bar have crossed the line of decency and acceptable professional conduct and speech and violated the Rules of Court through improper intervention or interference as third parties to a pending case. Preliminarily, it should be stressed that it was respondents themselves who called upon the Supreme Court to act on their Statement,[2] which they formally submitted, through Dean Marvic M.V.F. Leonen (Dean Leonen), for the Court's proper disposition. Considering the defenses of freedom of speech and academic freedom invoked by the respondents, it is worth discussing here that the legal reasoning used in the past by this Court to rule that freedom of expression is not a defense in administrative cases against lawyers for using intemperate speech in open court or in court submissions can similarly be applied to respondents' invocation of academic freedom. Indeed, it is precisely because respondents are not merely lawyers but lawyers who teach law and mould the minds of young aspiring attorneys that respondents' own non-observance of the Code of Professional Responsibility, even if purportedly motivated by the purest of intentions, cannot be ignored nor glossed over by this Court.

To fully appreciate the grave repercussions of respondents' actuations, it is *apropos* to revisit the factual antecedents of this case.

BACKGROUND OF THE CASE

Antecedent Facts and Proceedings

On **April 28, 2010**, the *ponencia* of Associate Justice Mariano del Castillo (Justice Del Castillo) in *Vinuya, et al. v. Executive Secretary* (G.R. No. 162230) was promulgated. On **May 31, 2010**, the counsel[3] for Vinuya, *et al*. (the "*Malaya Lolas*"), filed a Motion for Reconsideration of the *Vinuya* decision, raising solely the following grounds:

> I. OUR OWN CONSTITUTIONAL AND JURISPRUDENTIAL HISTORIES REJECT THIS HONORABLE COURTS' (SIC) ASSERTION THAT THE EXECUTIVE'S FOREIGN POLICY PREROGATIVES ARE VIRTUALLY UNLIMITED; PRECISELY, UNDER THE RELEVANT JURISPRUDENCE AND CONSTITUTIONAL PROVISIONS, SUCH PREROGATIVES ARE PROSCRIBED BY INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN STANDARDS, INCLUDING THOSE PROVIDED FOR IN THE RELEVANT INTERNATIONAL CONVENTIONS OF WHICH THE PHILIPPINES IS A PARTY.[4]
>
> II. THIS HONORABLE COURT HAS CONFUSED DIPLOMATIC PROTECTION WITH THE BROADER, IF FUNDAMENTAL, RESPONSIBILITY OF STATES TO PROTECT THE HUMAN RIGHTS OF ITS CITIZENS - ESPECIALLY WHERE THE RIGHTS ASSERTED ARE SUBJECT OF ERGA OMNES OBLIGATIONS AND PERTAIN TO JUS COGENS NORMS.[5]

On **July 19, 2010**,[6] counsel for the *Malaya Lolas*, Attys. H. Harry L. Roque, Jr. (Atty. Roque) and Romel Regalado Bagares (Atty. Bagares), filed a **Supplemental** Motion for Reconsideration in G.R. No. 162230, where they posited for the first time their charge of plagiarism as one of the grounds for reconsideration of the *Vinuya* decision. Among other arguments, Attys. Roque and Bagares asserted that:

> I.
>
> IN THE FIRST PLACE, IT IS HIGHLY IMPROPER FOR THIS HONORABLE COURT'S JUDGMENT OF APRIL 28, 2010 TO PLAGIARIZE AT LEAST THREE SOURCES - AN ARTICLE PUBLISHED IN 2009 IN THE YALE LAW JOURNAL OF INTERNATIONAL LAW, A BOOK PUBLISHED BY THE CAMBRIDGE UNIVERSITY PRESS IN 2005 AND AN ARTICLE PUBLISHED IN 2006 IN THE CASE WESTERN RESERVE JOURNAL OF INTERNATIONAL LAW - AND MAKE IT APPEAR THAT THESE SOURCES SUPPORT THE JUDGMENT'S ARGUMENTS FOR DISMISSING THE INSTANT PETITION WHEN IN TRUTH, THE PLAGIARIZED SOURCES EVEN MAKE A STRONG CASE FOR THE PETITION'S CLAIMS.[7]

They also claimed that "[i]n this controversy, the evidence bears out the fact not only of extensive plagiarism but of (sic) also of **twisting** the true intents of the plagiarized sources by the *ponencia* to suit the arguments of the assailed Judgment for denying the Petition."[8]

According to Attys. Roque and Bagares, the works allegedly plagiarized in the *Vinuya* decision were namely: (1) Evan J. Criddle and Evan Fox-Decent's article "A Fiduciary Theory of Jus Cogens;"[9] (2) Christian J. Tams' book *Enforcing Erga Omnes Obligations in International Law*;[10] and (3) Mark Ellis' article "Breaking the Silence: On Rape as an International Crime."[11]

On the same day as the filing of the Supplemental Motion for Reconsideration on July 19, 2010, journalists Aries C. Rufo and Purple S. Romero posted an article, entitled "SC justice plagiarized parts of ruling on comfort women," on the Newsbreak website.[12] The same article appeared on the GMA News TV website also on July 19, 2010.[13]

On **July 22, 2010**, Atty. Roque's column, entitled "Plagiarized and Twisted," appeared in the Manila Standard Today.[14] In the said column, Atty. Roque claimed that Prof. Evan Criddle, one of the authors purportedly not properly acknowledged in the *Vinuya* decision, confirmed that his work, co-authored with Prof. Evan Fox-Decent, had been plagiarized. Atty. Roque quoted Prof. Criddle's response to the post by Julian Ku regarding the news report[15] on the alleged plagiarism in the international law blog, *Opinio Juris*. Prof. Criddle responded to Ku's blog entry in this wise:

> The newspaper's[16] [plagiarism] claims are based on a motion for reconsideration filed yesterday with the Philippine Supreme Court yesterday. The motion is available here:
>
> http://harryroque.com/2010/07/18/supplemental-motion-alleging-plagiarism-in-the-supreme-court/
>
> The motion suggests that the Court's decision contains thirty-four sentences and citations that are identical to sentences and citations in my2009 YJIL article (co-authored with Evan Fox-Decent). Professor Fox-Decent and I were unaware of the petitioners' [plagiarism] allegations until after the motion was filed today.
>
> Speaking for myself, the most troubling aspect of the court's jus cogens discussion is that it implies that the prohibitions against crimes against humanity, sexual slavery, and torture are not jus cogens norms. Our article emphatically asserts the opposite. The Supreme Court's decision is available here: http://sc.judiciary.gov.ph/jurisprudence/2010/april2010/162230.htm[17]

On even date, July 22, 2010, Justice Del Castillo wrote to his colleagues on the

Court in reply to the charge of plagiarism contained in the Supplemental Motion for Reconsideration.[18]

In a letter dated **July 23, 2010**, another purportedly plagiarized author in the *Vinuya* decision, Dr. Mark Ellis, wrote the Court, to wit:

> Your Honours:
>
> I write concerning a most delicate issue that has come to my attention in the last few days.
>
> Much as I regret to raise this matter before your esteemed Court, I am compelled, as a question of the integrity of my work as an academic and as an advocate of human rights and humanitarian law, to take exception to the possible unauthorized use of my law review article on rape as an international crime in your esteemed Court's Judgment in the case of *Vinuya et al. v. Executive Secretary et al.* (G.R. No. 162230, Judgment of 28 April 2010).
>
> My attention was called to the Judgment and the issue of possible plagiarism by the Philippine chapter of the Southeast Asia Media Legal Defence Initiative (SEAMLDI),[19] an affiliate of the London-based Media Legal Defence Initiative (MLDI), where I sit as trustee.
>
> In particular, I am concerned about a large part of the extensive discussion in footnote 65, pp. 27-28, of the said Judgment of your esteemed Court. I am also concerned that your esteemed Court may have misread the arguments I made in the article and employed them for cross purposes. This would be ironic since the article was written precisely to argue for the appropriate legal remedy for victims of war crimes, genocide, and crimes against humanity.
>
> I believe a full copy of my article as published in the *Case Western Reserve Journal of International Law* in 2006 has been made available to your esteemed Court. I trust that your esteemed Court will take the time to carefully study the arguments I made in the article.
>
> I would appreciate receiving a response from your esteemed Court as to the issues raised by this letter.
>
> With respect,
>
> (Sgd.)
> Dr. Mark Ellis[20]

In Memorandum Order No. 35-2010 issued on **July 27, 2010**, the Court formed the Committee on Ethics and Ethical Standards (the Ethics Committee) pursuant to Section 13, Rule 2 of the Internal Rules of the Supreme Court. In an *En Banc* Resolution also dated July 27, 2010, the Court referred the July 22, 2010 letter of Justice Del Castillo to the Ethics Committee. The matter was subsequently docketed