

EN BANC

[A.C. No. 4058, March 12, 1998]

**BENGUET ELECTRIC COOPERATIVE, INC. COMPLAINANT, VS.
ATTY. ERNESTO B. FLORES, RESPONDENT.**

DECISION

PANGANIBAN, J.:

The profession of law exacts the highest standards from its members and brooks no violation of its code of conduct. Accordingly, a lawyer who trifles with judicial processes, engages in forum shopping and blatantly lies in his pleadings must be sanctioned.

The Case

This is an administrative complaint against Atty. Ernesto Flores filed by Benguet Electric Cooperative, Inc. (BENECO) before this Court on July 5, 1993, seeking his removal or suspension from the bar for forum shopping, which amounted to “grave misconduct, x x x unduly delaying the administration of justice, and violating with impunity his oath of office and applicable laws and jurisprudence.”^[1]

After the respondent submitted his Comment, dated August 21, 1993, we referred the case to the Integrated Bar of the Philippines (IBP) on September 27, 1993 for investigation, report and recommendation. On August 15, 1997, we received a resolution from the IBP Board of Governors, finding respondent guilty of violating Canons 10 and 12 of the Code of Professional Responsibility and recommending his suspension from the practice of law for a period of six months, viz:

“RESOLUTION NO. XII-97-149

Adm. Case NO. 4058

Benguet Electric Cooperative, Inc. vs.

Atty. Ernesto B. Flores

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, hereinmade [sic] part of this Resolution/Decision as Annex “A”; and finding the recommendation therein to be fully supported by the evidence on record and the applicable laws and rules, Respondent Atty. Ernesto Flores is hereby SUSPENDED from the practice of law for six (6) months for violating the provision of Canon[s] 10 and 12 of the Code of Professional Responsibility.”^[2]

The Facts

Because the parties^[3] agreed to dispense with the presentation of testimonial evidence, the case was submitted for resolution on the basis of their documentary evidence. As found by Investigating Commissioner Plaridel C. Jose, the facts are as follows:

"x x x. On February 25, 1993, Labor Arbiter Irenarco Rimando of the National Labor Relations Commission, Regional Arbitration Branch, Cordillera Administrative Region, Baguio City, issued a Writ of Execution (x x x) in NLRC Case No. RAB-1-0313-84 to enforce the decision rendered by the Supreme Court on May 18, 1992 in G.R. No. 89070 (Benguet Electric Cooperative, Inc. vs. NLRC, 209 SCRA 55). The Writ of Execution was issued on motion of Benguet Electric Cooperative (BENECO for short) to collect the amount of P344,000.00 which it paid to Peter Cosalan during the pendency of the case before the Supreme Court, on the basis of its decision ordering the respondent board members 'to reimburse petitioner BENECO any amount that it may be compelled to pay to respondent Cosalan by virtue of the decision of Labor Arbiter Amado T. Adquilen.'

After issuance of the writ of execution, the respondent, as new counsel for the losing litigant-members of the BENECO Board of Directors, filed a Motion for Clarification with the Third Division of the Supreme Court in G.R. No. 89070, the minute resolution to wit: 'to note without action the aforesaid motion'.

Thereafter, the respondent instituted a suit docketed as Civil Case NO. 2738-R (x x x) with the Regional Trial Court, Branch 7, Baguio City, seeking to enjoin the defendants Clerk of Court, et al. from levying on their properties in satisfaction of the said writ of execution. That case, however, was dismissed by the Presiding Judge Clarence Villanueva in his Order dated March 18, 1993 (x x x).

Accordingly, the Office of the Clerk of Court, MTC, Baguio City, through Sheriff III Wilfredo Mendez, proceeded to levy on the properties of the losing board members of BENECO. Thus, a sale at public auction was set on June 1, 1993, at 10:00 o'clock in the morning in front of the Baguio City Hall, per Sheriff's Notice of Sale dated May 4, 1993 (x x x), of the properties of Abundio Awal and Nicasio Aliping[,] two of the losing members of the Board of Directors of BENECO in the aforementioned case.

Respondent claims in his comment (x x x) that Branch 7, motu proprio, dismissed Civil Case No. 2738-R for lack of jurisdiction on March 18, 1993, which dismissal was [sic] became final due to respondent's failure to perfect an appeal therefrom which claim according to the complainant, constitute[s] deliberate misrepresentation, if not falsehood, because the respondent indeed interposed an appeal such that on May 11, 1993, the RTC 7 of Baguio City transmitted the entire record of Civil Case No. 2738-R to the Court of Appeals per certified machine copy of the letter transmittal of same date (x x x).

While respondent 'never essentially intended to assail the issuance by the NLRC of the Writ of Execution x x x nor sought to undo it' (x x x) the complaint in Civil Case No. 2738-R which he filed prays for the immediate issuance of a temporary restraining order and/or preliminary writ of injunction for defendants Clerk of Court and Ex-Officio City Sheriff to cease and desist from enforcing the execution and levy of the writ of execution issued by the NLRC-CAR, pending resolution of the main action in said court (x x x) which complainant likewise claims as an unprocedural maneuver to frustrate the execution of the decision of the Supreme Court in G.R.

No. 89070 in complete disregard of settled jurisprudence that regular courts have no jurisdiction to hear and decide questions which arise and are incidental to the enforcement of decisions, orders and awards rendered in labor cases citing the case of Cangco vs. CA, 199 SCRA 677, a display of gross ignorance of the law.

On May 26, 1993, respondent again filed for Abundio Awal and Nicasio Aliping with the Regional Trial Court, Branch 9, La Trinidad, Benguet, separate complaints for Judicial Declaration of Family Home Constituted, Ope Lege, and thus Exempt from Levy and Execution the subject properties with Damages, etc. docketed as Civil Cases Nos. 93-F-0414 (x x x) and 93-F-0415 (x x x), which are essentially similar actions to enjoin the enforcement of the judgment rendered in NLRC Case No. RAB-1-0313-84. He also filed an urgent Motion Ex-parte (x x x) praying for temporary restraining order in these two (2) cases.

The complainant further alleges that respondent's claim for damages against the defendant Sheriff is another improper and unprocedural maneuver which is likewise a violation of respondent's oath not to sue on groundless suit since the said Sheriff was merely enforcing a writ of execution as part of his job."

Recommendation of the IBP

As noted earlier, Investigating Commissioner Plaridel C. Jose recommended, and the IBP Board of Governors concurred, that respondent be suspended from the bar for six months for:

1. Falsehood, for stating in his comment before this Court that the order of the RTC dismissing the complaint in Civil Case No. 2738-R was not appealed on time
2. Failure to comply with Supreme Court Circular No. 28-91 on forum shopping

Commissioner Jose ratiocinated:

"A cursory glance of (sic) x x x the complaint filed by the respondent in Civil Case No. 2738-R before the RTC of Baguio City, which complaint was signed and verified under oath by the respondent, reveals that it lacks the certification required by Supreme Court Circular No. 28-91 which took effect on January 1, 1992 to the effect that 'to the best of his knowledge, no such action or proceeding is pending in the Supreme Court, Court of Appeals or different divisions thereof or any tribunal or agency. If there is any other action pending, he must state the status of the same. If he should learn that a similar action or proceeding has been filed or pending before the Supreme Court, Court of Appeals or different divisions thereof or any tribunal or agency[,] he should notify the court, tribunal or agency within five (5) days from such notice.'

"Among the other penalties, the said circular further provides that the lawyer may also be subjected to disciplinary proceedings for non-compliance thereof.

"In sum, it is clear that the respondent violated the provisions of Canon[s] 10 and 12 of the Code of Professional Responsibility under which the lawyer owes candor, fairness and good faith to the court and exert[s] every effort and consider[s] it his duty to assist in the speedy and efficient administration of justice."^[4]

This Court's Ruling

We adopt and affirm the recommendation of the IBP suspending the respondent from the bar, but we increase the period from six (6) months to one (1) year and six (6) months.

Forum Shopping

Circular No. 28-91,^[5] dated September 4, 1991 which took effect on January 1, 1992, requires a certificate of non-forum shopping to be attached to petitions filed before this Court and the Court of Appeals. This circular was revised on February 8, 1994. The IBP found that the respondent had violated it, because the complaint he filed before the RTC of Baguio City “lack[ed] the certification required by Supreme Court Circular No. 28-91.”^[6]

We distinguish. Respondent’s failure to attach the said certificate cannot be deemed a violation of the aforementioned circular, because the said requirement applied only to petitions filed with this Court and the Court of Appeals.^[7] Likewise inapplicable is Administrative Circular No. 04-94 dated February 8, 1994 which extended the requirement of a certificate of non-forum shopping to all initiatory pleadings filed in all courts and quasi-judicial agencies other than this Court and the Court of Appeals. Circular No. 04-94 became effective only on April 1, 1994, but the assailed complaint for injunction was filed on March 18, 1993, and the petition for the constitution of a family home was instituted on May 26, 1993.

Be that as it may, respondent is still guilty of forum shopping. In *Chemphil Export and Import Corporation vs. Court of Appeals*,^[8] this Court declared that “(t)he rule against forum shopping has long been established and subsequent circulars^[9] of this Court merely formalized the prohibition and provided the appropriate penalties against transgressors.” The prohibition is found in Section 1(e) of Rule 16 and Section 4 of Rule 2 of the 1964 Rules of Court, which provide:

“SECTION 1. *Grounds.* -- Within the time for pleading, a motion to dismiss the action may be made on any of the following grounds:

xxx xxx

xxx

(e) That there is another action pending between the same parties for the same cause;

xxx xxx

xxx^[10]

“SEC. 4. *Effect of splitting a single cause of action.* -- If two or more complaints are brought for different parts of a single cause of action, the filing of the first may be pleaded in abatement of the other or others, in accordance with section 1 (e) of Rule 16, and a judgment upon the merits in any one is available as a bar in the others.”

^[11]

The prohibition is also contained in Circular No. 28-91. This circular did not only require that a certification of non-forum shopping be attached to the petitions filed before this Court or the Court of Appeals; it also decreed that forum shopping constituted direct contempt of court and could subject the offending lawyer to disciplinary action. The third paragraph thereof reads:

“3. *Penalties.*

(a) Any violation of this Circular shall be a cause for the summary dismissal of the multiple petition or complaint.

(b) Any willful and deliberate forum shopping by any party and his lawyer with the filing of multiple petitions and complaints to ensure favorable action shall constitute direct contempt of court.

(c) The submission of false certification under Par. 2 of the Circular shall likewise constitute contempt of Court, without prejudice to the filing of criminal action against the guilty party. The lawyer may also be subjected to disciplinary proceedings. (Underscoring supplied.)

The foregoing were substantially reproduced in Revised Circular No. 28-91^[12] and Administrative Circular No. 04-94.^[13]

In a long line of cases, this Court has held that forum shopping exists when, as a result of an adverse opinion in one forum, a party seeks a favorable opinion (other than by appeal or certiorari) in another,^[14] or when he institutes two or more actions or proceedings grounded on the same cause, on the gamble that one or the other court would make a favorable disposition.^[15] The most important factor in determining the existence of forum shopping is the “vexation caused the courts and parties-litigants by a party who asks different courts to rule on the same or related causes or grant the same or substantially the same reliefs.”^[16]

After this Court rendered its Decision^[17] in *Benguet Electric Cooperative, Inc. vs. National Labor Relations Commission, et al.*^[18] and upon motion of BENECO, Labor Arbiter Irenarco R. Rimando issued a writ of execution^[19] ordering the clerk of court and ex officio city sheriff of the Municipal Trial Court of Baguio City to levy on and sell at public auction personal and real property of the members of the Board of Directors of BENECO.

On March 18, 1993, Respondent Flores, acting as counsel for BENECO Board Members Victor Laoyan, Nicasio Aliping, Lorenzo Pilando and Abundio Awal, filed with the RTC an injunction suit praying for the issuance of a temporary restraining order (TRO) “to preserve the status quo as now obtaining between the parties,” as well as a writ of preliminary preventive injunction ordering the clerk of court and the ex officio city sheriff of the MTC of Baguio to “cease and desist from enforcing by execution and levy the writ of execution from the NLRC-CAR, pending resolution of the main action raised in court.”^[20]

When this injunction case was dismissed, Respondent Flores filed with another branch of the RTC two identical but separate actions both entitled “Judicial Declaration of Family Home Constituted, ope lege, Exempt from Levy and Execution; with Damages, etc.,” docketed as Civil Case Nos. 93-F-0414 and 93-F-0415.^[21] The said complaints were supplemented by an “Urgent Motion Ex Parte”^[22] which prayed for an order to temporarily restrain Sheriff Wilfredo V. Mendez from proceeding with the auction sale of plaintiffs’ property “to avoid rendering ineffectual and functus [oficio] any judgment of the court later in this [sic] cases, until further determined by the court.”

Civil Case Nos. 93-F-0414 and 93-F-0415 are groundless suits. *Modequillo vs. Breva*,^[23] reiterated in *Manacop vs. Court of Appeals*,^[24] shows the frivolity of these proceedings: