

Wilfredo Lapitan
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division



Republic of the Philippines
Supreme Court
Manila

JAN 06 2016

THIRD DIVISION

ROLANDO TOLENTINO,
Complainant,

A.C. No. 10737

Present:

VELASCO, JR., J.,
Chairperson,

- versus -

PERALTA,
VILLARAMA, JR.,
REYES, and
JARDELEZA, JJ.

ATTY. RODIL L. MILLADO
and **ATTY. FRANCISCO B.**
SIBAYAN,

Promulgated:

Respondents.

November 9, 2015

X-----*Wilfredo Lapitan*-----X

RESOLUTION

REYES, J.:

Before the Court is the instant Verified Letter Complaint for Disbarment¹ dated February 9, 2015 filed by Rolando Tolentino (Tolentino) against Atty. Rodil L. Millado (Atty. Millado) and Atty. Francisco B. Sibayan (Atty. Sibayan) (respondents) for alleged unethical misrepresentations in violation of the Canons of the Code of Professional Responsibility.

¹ *Rollo*, pp. 1-7.

Antecedents

In the October 28, 2013 elections, Tolentino and Henry A. Manalo (Manalo) both ran as *Punong Barangay* of *Barangay Calingcuan*, Tarlac City. Manalo was proclaimed winner with 441 votes. Tolentino, on the other hand, garnered 440 votes.²

Tolentino thereafter filed against Manalo an Election Protest³ dated October 30, 2013 before the Municipal Trial Court in Cities (MTCC), Tarlac City. The protest was docketed as Election Case No. 03-2013, raffled to Branch 1 presided by Judge Ryan Scott F. Robiños (Judge Robiños).

After the revision of ballots and conduct of hearings with reception of evidence, Judge Robiños rendered on November 26, 2014 a Decision⁴ declaring Tolentino the winner with 438 votes as opposed to 436 garnered by Manalo.

To assail the MTCC Decision dated November 26, 2014, Manalo promptly filed an ordinary appeal before the Commission on Elections (COMELEC).⁵

Tolentino, on his part, filed before the MTCC a motion for execution pending appeal,⁶ which was granted through the Special Order⁷ dated December 16, 2014.

Manalo filed before the COMELEC a Petition for *Certiorari*⁸ dated January 8, 2015 to challenge the MTCC Special Order dated December 16, 2014. Manalo was represented therein by Atty. Millado.

On January 26, 2015, Atty. Sibayan, as collaborating counsel for Manalo, filed before the COMELEC an Extremely Urgent Manifestation/Motion for Issuance of Injunctive Relief and/or *Status Quo Ante* Order with Entry of Appearance.⁹

² Id. at 13, 43.

³ Id. at 57-60.

⁴ Id. at 13-41.

⁵ Id. at 8.

⁶ Id.

⁷ Id. at 8-12.

⁸ Id. at 42-50.

⁹ Id. at 170-178.

On January 30, 2015, the COMELEC First Division issued a Temporary Restraining Order enjoining Judge Robiños from implementing or enforcing the MTCC Special Order dated December 16, 2014. Due to the possibility that Tolentino had already assumed the functions of *Punong Barangay* pursuant to the aforementioned Special Order, the COMELEC likewise issued a *Status Quo Ante* Order directing the turnover of the post to Manalo.¹⁰

Issues

In February of 2015, Tolentino filed before the Court the instant complaint for disbarment against the respondents alleging violation of Rules 10.01¹¹ and 10.2¹² of Canon 10¹³ of the Code of Professional Responsibility committed through the following:

(1) Atty. Millado improperly misrepresented in the Petition for *Certiorari*, which he filed before the COMELEC, the ruling in the case of *Fermo v. COMELEC*,¹⁴ to the effect that “*shortness of the remaining term of office and posting of bond are not good reasons for execution of a judgment pending appeal.*”¹⁵

(2) Atty. Sibayan wrote a misleading statement in his Extremely Urgent Manifestation/Motion for Issuance of Injunctive Relief and/or *Status Quo Ante* Order with Entry of Appearance filed before the COMELEC. He wrote that the protest case was initiated on November 16, 2013 and decided on May 5, 2014.¹⁶ The MTCC had in fact rendered its Decision on November 26, 2014.

(3) The respondents falsely alleged that the MTCC had baselessly disregarded the conclusions of the Philippine National Police (PNP) Crime Laboratory anent the dissimilarities in the handwritings found in some of the ballots, resulting to prejudice against Manalo. Tolentino claimed that the handwritings belonged to the same persons.¹⁷

¹⁰ Id. at 179-180.

¹¹ 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.

¹² Rule 10.02 - A lawyer shall not knowingly misquote or misrepresent the contents of a 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.

¹³ CANON 10 – A LAWYER OWES CANDOR, FAIRNESS AND GOOD FAITH TO THE COURT.

¹⁴ 384 Phil. 584 (2000).

¹⁵ Id. at 592, citing SC Resolution dated August 26, 1997 in G.R. No. 128473 entitled *Lauban v. COMELEC*.

¹⁶ *Rollo*, p. 4.

¹⁷ Id. at 3-4.

In his Comment,¹⁸ Atty. Millado claims that Tolentino's complaint tends to destroy his honor and reputation as a person and a lawyer.

Atty. Millado denies having misquoted the doctrine in *Fermo*. In the aforesaid case, the Court ruled that the "*shortness of term, alone and by itself, cannot justify premature execution.*"¹⁹ The Petition for *Certiorari*, which he filed before the COMELEC, indicated that the shortness of term is not a sufficient ground to support execution pending appeal. The statement in *Fermo*, on one hand, and Atty. Millado's in his Petition for *Certiorari*, on the other, meant the same thing. Before an order directing execution pending appeal in an election protest case can be issued, there must exist other grounds justifying the same apart from shortness of term alone.²⁰

Atty. Millado further avers that his statement anent the MTCC's baseless disregard of the findings of the PNP Crime Laboratory is honest and objective. Tolentino presented an expert witness from the National Bureau of Investigation (NBI), who testified that the handwritings found in several ballots were written by the same persons. Manalo, on his part, offered an expert witness from the PNP, who stated that the handwritings in the ballots belonged to different persons. The MTCC favored the NBI's findings even when the former "*could not determine the difference between the arcaded and circular manner of writing.*"²¹ Thus, Atty. Millado merely and honestly observed that the MTCC substituted with its own the findings of the PNP Crime Laboratory even when the court lacked the expertise and experience in analyzing handwritings.²²

Atty. Sibayan, on his part, alleges that in his Extremely Urgent Manifestation/Motion for Issuance of Injunctive Relief and/or *Status Quo Ante* Order with Entry of Appearance dated January 26, 2015 filed before the COMELEC, he had inadvertently written May 5, 2014, instead of November 26, 2014, as the date of the MTCC Decision.²³ He admits having committed a typographical error, but insists on his lack of intent to mislead especially since he had correctly indicated in the first paragraph of the aforesaid motion that the MTCC had rendered its Decision on November 26, 2014.²⁴ Besides, whether the MTCC rendered its Decision on May 2014 or November 2014, the fact is unchanged that the remaining term of the

¹⁸ Id. at 245-249.

¹⁹ *Fermo v. COMELEC*, supra note 14, at 592.

²⁰ *Rollo*, p. 246.

²¹ Id. at 247.

²² Id.

²³ Id. at 174.

²⁴ Id. at 170.

contested office is two years, more or less. Hence, shortness of term as a ground justifying execution pending appeal is negated.²⁵

Ruling of the Court

The Court reprimands the respondents.

The Court finds no misrepresentation or misquotation committed by Atty. Millado when he indicated that “‘*shortness of term*’ is not a sufficient ground to support execution pending appeal.”²⁶ Notably, only the phrase “‘*shortness of term*’” is placed inside the quotation marks. He did not exactly quote the words “‘*shortness of term,*’ alone and by itself, cannot justify premature execution” and “‘*shortness of the remaining term of office and posting a bond are not good reasons for execution of a judgment pending appeal,*” as found in *Fermo*.²⁷ Atty. Millado merely restated the ruling without altering its substance. This, the Court finds as permissible.

Anent Atty. Sibayan’s alleged misrepresentation relative to the date of the MTCC’s rendition of its decision, the Court finds the same to be without merit.

In *Adez Realty, Incorporated v. CA*,²⁸ the Court reminds lawyers, viz:

It is the bounden duty of lawyers to check, review and recheck the allegations in their pleadings, x x x and ensure that the statements therein are accurate x x x. The legal profession demands that lawyers thoroughly go over pleadings, motions and other documents dictated or prepared by them x x x before filing them with the court. x x x.

x x x x

x x x A lawyer should never venture to mislead the court by false statements or quotations of facts or laws. x x x.²⁹ (Citation omitted)

In paragraph 12.4 of Extremely Urgent Manifestation/Motion for Issuance of Injunctive Relief and/or *Status Quo Ante* Order with Entry of Appearance filed before the COMELEC, Atty. Sibayan indeed erroneously wrote that the MTCC had rendered its Decision on May 5, 2014.³⁰ Notably, however, it was correctly indicated in paragraph 1 of the same

²⁵ Please see Atty. Sibayan’s Comment, pp. 211-222; id. at 215-216.

²⁶ Id. at 46.

²⁷ Supra note 14, at 592.

²⁸ G.R. No. 100643, October 30, 1992, 215 SCRA 301.

²⁹ Id. at 305-306.

³⁰ *Rollo*, p. 174.

Manifestation/Motion that the date of the MTCC Decision was November 26, 2014.³¹ Prescinding therefrom, the Court finds sufficient Atty. Sibayan's explanation that he merely committed a typographical error, without any real intent to mislead. While the lawyers are enjoined to be precise in the allegations in their pleadings, occasional errors, if committed or omitted without apparent intent to deceive, do not provide the Court with compelling grounds to impose disciplinary measures.

Lastly, Tolentino claims that the respondents should be penalized for falsely alleging that the MTCC, with partiality, disregarded on the basis of mere observation and nothing more, the findings of the PNP Crime Laboratory. To this, the Court agrees.

In his Petition for *Certiorari* filed before the COMELEC, Atty. Millado wrote that:

[With] [t]he disregard of x x x [the] MTCC of the examination made by the PNP Crime Laboratory and substituting the same on [the basis of] its mere observation, which is lacking [in] expertise and experience, [it] is evident that x x x [the] MTCC was biased in favoring [Tolentino], thus, subverting the will of the people of Barangay Calingcuan, Tarlac City in choosing [Manalo] as their duly elected Barangay Chairman[.]³²

Atty. Sibayan made exactly the same allegation in paragraph 9 of his Extremely Urgent Manifestation/Motion for Issuance of Injunctive Relief and/or *Status Quo Ante* Order with Entry of Appearance filed before the COMELEC.³³

In disregarding the findings of the PNP Crime Laboratory, the MTCC explained that:

During the respective testimonies of the document examiners, the Court asked extensive clarificatory questions from each of the witnesses. The Court would ask the document examiners to explain their findings in detail and show the similarities or dissimilarities to the Court and point to the specific portions found in the enlarged photographs of the ballots. The witness from the NBI patiently explained his findings in detail, all the time illustrating his findings with enlarged photographs of the questioned ballots. Based on the Court[']s perception of the enlarged photographs, the Court was in agreement with the findings of the NBI examiner that there were significant similarities in the handwritings in the questioned ballots. On the other hand, the Court found it difficult to see the

³¹ Id. at 170.

³² Id. at 46.

³³ Id. at 173.

differences in the handwritings as pointed out by the PNP examiner. To the eye of the Court, there were no significant dissimilarities in the handwritings on the questioned ballots. For example, the PNP witness testified that tip of the letter A on Q-1 is arcaded, while the letter A on Q-2 is written in a circular manner. Upon scrutiny, the Court could not determine the difference between the arcaded and circular manner of writing and the witness could not explain the differences in a clear manner.³⁴

In A.M. No. 10-10-4-SC,³⁵ the Court is emphatic that:

[M]embership in the Bar imposes upon a person obligations and duties which are not mere flux and ferment. His investiture into the legal profession places upon his shoulders no burden more basic, more exacting and more imperative than that of respectful behavior toward the courts. He vows solemnly to conduct himself “with all good fidelity x x x to the courts”; and the Rules of Court constantly remind him “to observe and maintain the respect due to courts of justice and judicial officers.” x x x.

x x x x

The counsel in any case may or may not be an abler or more learned lawyer than the judge, **and it may tax his patience and temper to submit to rulings which he regards as incorrect, but discipline and self-respect are as necessary to the orderly administration of justice as they are to the effectiveness of an army.** x x x.

x x x x

As an officer of the court and its indispensable partner in the sacred task of administering justice, graver responsibility is imposed upon a lawyer than any other to uphold the integrity of the courts and to show respect to its officers. This does not mean, however, that a lawyer cannot criticize a judge. x x x

x x x x

But it is a cardinal condition of all such criticism that it shall be *bona fide*, and shall not spill over the walls of decency and propriety. **A wide chasm exists between fair criticism, on the one hand, and abuse and slander of courts and the judges thereof, on the other.** Intemperate and unfair criticism is a gross violation of the duty of respect to courts. It is such a misconduct, that subjects a lawyer to disciplinary action.³⁶ (Citations omitted and emphasis in the original)

³⁴ Id. at 33.

³⁵ *Re: Letter of the UP Law Faculty Entitled Restoring Integrity: A Statement by the Faculty of the UP College of Law*, 660 Phil. 1 (2011).

³⁶ Id. at 75-78.

In the case at bar, the MTCC amply explained the reasons why it had accorded more credence to the testimony of the NBI expert witness. Considering that there were two conflicting testimonies both rendered by expert witnesses, the trial court was not bound by either and was not precluded from making its own conclusions. In resolving the issue of similarities and dissimilarities in the handwritings found in several ballots, the MTCC used its powers of observation and properly applied logic to the facts of the case.

In Atty. Millado's Petition for *Certiorari* and Atty. Sibayan's Extremely Urgent Manifestation/Motion for Issuance of Injunctive Relief and/or *Status Quo Ante* Order with Entry of Appearance filed before the COMELEC, they recklessly alleged not only the MTCC's lack of expertise and experience, but bias as well, in violation of Canon 11³⁷ of the Code of Professional Responsibility. Rules 11.03 and 11.04 of the said Code read as follows:

Rule 11.03 - A lawyer shall abstain from scandalous, *offensive* or menacing language or behavior before the Courts.

Rule 11.04 - A lawyer shall *not attribute to a Judge motives not supported by the record* or have no materiality to the case. (Italics ours)

Again, the Court reiterates that the use of intemperate language and unkind ascriptions has no place in the dignity of judicial forum.³⁸ Further, while lawyers are free to criticize judges, criticism *sans* fair basis, grossly violates the duty to accord respect owing to the courts.

The Court notes that while Tolentino filed the instant complaint against the respondents for violation of Canon 10 of the Code of Professional Responsibility, their allegations herein clearly included the respondents' unfair attribution of lack of expertise and experience, and impartiality of the MTCC.

WHEREFORE, respondents Atty. Rodil L. Millado and Atty. Francisco B. Sibayan are hereby **REPRIMANDED** for breach of Canon 11, Rules 11.03 and 11.04 of the Code of Professional Responsibility, with a **STERN WARNING** that repetition of the same or similar offenses in the future will be severely dealt with by this Court.

³⁷ 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.

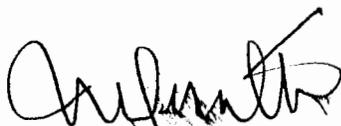
³⁸ *Atty. Fernandez v. CA Justices Verzola, Villarama, Jr. and Guariña III*, 480 Phil. 1, 8 (2004).

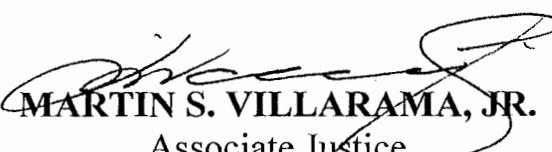
SO ORDERED.

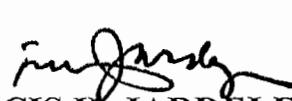

BIENVENIDO L. REYES
Associate Justice

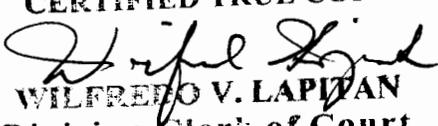
WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson


DIOSDADO M. PERALTA
Associate Justice


MARTIN S. VILLARAMA, JR.
Associate Justice


FRANCIS H. JARDELEZA
Associate Justice

CERTIFIED TRUE COPY

WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
JAN 06 2016