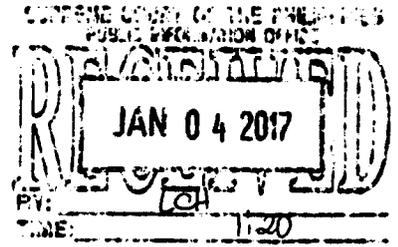




Republic of the Philippines
Supreme Court
 Manila

FIRST DIVISION



SANDY V. DOMINGO,
 Complainant,

A.C. No. 7927

Present:

- versus -

SERENO, *C.J.*,
 LEONARDO-DE CASTRO,
 BERSAMIN,
 PERLAS-BERNABE, and
 CAGUIOA, *JJ.*

ATTY. PALMARIN E. RUBIO
 and **ATTY. NICASIO T. RUBIO,**
 Respondents.

Promulgated:

OCT 19 2016

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DECISION

BERSAMIN, J.:

Administrative charges against members of the Bar must not rest on frivolous matters. Otherwise, they shall be outrightly dismissed because their aim is only to harass the respondents.

The Case

Under consideration is the complaint for disbarment brought on April 11, 2008 against respondent Atty. Palmarin E. Rubio, in his capacity as the City Prosecutor of Legazpi City, for allegedly refusing to act on the order of the Secretary of Justice and for allegedly fraudulently and deceitfully withholding the prepared motion for reconsideration from being filed in the Department of Justice (DOJ), thereby causing damage and prejudice to the complainant – an accused in parricide – thereby violating the Lawyer’s Oath and the *Code of Professional Responsibility*.

The complainant later on charged respondent Atty. Nicasio T. Rubio in his capacity as Assistant City Prosecutor for his direct participation in the alleged irregularities imputed to his co-respondent.

For convenience, respondents Atty. Palmarin E. Rubio and Atty. Nicasio T. Rubio are hereafter be referred to, respectively, as CP Rubio and ACP Rubio.

Antecedents

The Philippine National Police (PNP) of Legazpi City filed a case for murder in the Office of the City Prosecutor of Legazpi City arising from the killing of one Juan Edgardo Yap Bongalon on August 22, 2005. After due proceedings, the Office of the City Prosecutor filed an information in the Regional Trial Court (RTC) in Legazpi City charging Ariel Dayap and four other persons who were then not identified with particularity as having acted in conspiracy with Dayap to commit the murder.

Subsequently, Dayap executed an extrajudicial confession to the effect that he had conspired with four other persons, namely: the complainant, Mike Arena, Noli Marquez and Lorna Bongalon (the widow of the victim), with the last as the mastermind.

Thus, the Office of the City Prosecutor sought leave of court to conduct a preliminary investigation preparatory to amending the information to include the other four in the charge. However, the assigned investigating prosecutor requested her inhibition from conducting further preliminary investigation because Lorna Bongalon had branded her as biased.

The request for inhibition was granted, and the case was re-assigned to ACP Rubio, who ultimately rendered a resolution recommending the dismissal of the charge as to the four alleged co-conspirators upon finding that the extrajudicial confession of Dayap had been uncounselled.

Approving the resolution, CP Rubio moved for the withdrawal of the information, but the RTC denied the motion to withdraw because the confession of Dayap already established probable cause. The respondents moved to reconsider the denial, but the RTC persisted on its resolution.

On February 6, 2006, the Legazpi PNP presented additional evidence. Thus, a new complaint was filed and was assigned for preliminary investigation to ACP Rubio, who, after conducting the preliminary investigation, issued his resolution on February 27, 2006 finding probable cause for parricide against the complainant, Arena, Marquez and Lorna

Bongalon, acting in conspiracy with Dayap, and for robbery only against Dayap, Arena and Marquez.

The amended information for parricide was allowed by the RTC on March 6, 2006, and the RTC issued the warrants for the arrest of the newly-charged accused.

Lorna Bongalon sought a reinvestigation, but the RTC did not give due course to her motion. Accordingly, she moved for the deferment of her arraignment to enable her to appeal to the DOJ by petition for review.

In the meantime, the complainant was arrested. On March 16, 2006, he executed an extrajudicial confession with the assistance of counsel.

Acting favorably on Lorna Bongalon's petition for review, the Secretary of Justice directed CP Rubio on August 11, 2006 to cause with leave of court the withdrawal of the information for parricide against her, the complainant and their three co-accused, and to file in lieu thereof another information for murder only against Dayap.

On August 24, 2006, the respondents filed a motion for reconsideration vis-à-vis the resolution of the Secretary of Justice arguing that the extrajudicial confession executed by the complainant had not been made part of the petition for review filed by Lorna Bongalon's counsel.

It appears that the respondents failed to actually send a copy of their motion for reconsideration to the Secretary of Justice despite furnishing all the parties copies of the motion; and that the motion for reconsideration was received by the DOJ only on April 12, 2007.¹

According to the complainant, CP Rubio and ACP Rubio, by intentionally not sending to him a copy of their motion for reconsideration to the DOJ despite furnishing their motion for reconsideration to the other parties, and by belatedly submitting their motion for reconsideration to the DOJ, which eventually got a copy of it, acted fraudulently.

CP Rubio and ACP Rubio countered that their failure to send a copy to the complainant and to the DOJ was due to sheer oversight, explaining that the releasing clerk of the Office of the City Prosecutor of Legazpi City had not sent the motion for reconsideration despite furnishing copies thereof to all the other parties.

¹ *Rollo*, p. 398.

Based on the foregoing, the complainant initiated the complaint for disbarment against CP Rubio and ACP Rubio directly in this Court,² stating that the refusal of the respondents to comply with the order of the Secretary of Justice had caused him to remain behind bars for a crime that he had already been exonerated of, thereby causing him and his family tremendous sufferings; that the respondents had also withheld the filing at the DOJ of their already-prepared motion for reconsideration, and caused the filing of the motion only many months later; that upon resuming its proceedings in the criminal case involving the complainant in early 2007, the RTC, unaware of the appeal by petition for review of Lorna Bongalon in the DOJ, proceeded with the case and issued on March 1, 2007 the order for the arrest against all the accused, including him, but it could have suspended such proceedings to give way to the exercise of review by the Secretary of Justice; that the actuations of the respondents were unjust and absolutely prejudicial to him because he was thereby forced to languish in jail; and that the respondents deserved to be disbarred or otherwise sanctioned for their ignorance of the law and misconduct.

After the parties submitted their respective position papers, the Investigating Commissioner of the Integrated Bar of the Philippines-Commission on Bar Discipline (IBP-CBD) deemed the case submitted for resolution upon the sole issue of whether or not the act of the respondents in respect of the filing of the motion for reconsideration constituted a ground for disbarment.

The IBP- CBD's Report and Recommendation

In its Report and Recommendation dated January 31, 2011,³ the IBP-CBD recommended that the complaint for disbarment be dismissed for lack of merit.

The Investigating Commissioner noted that although the complainant relied on Section 27,⁴ of Rule 138 of the *Rules of Court*, the complaint for disbarment was nonetheless frivolous because the rule – which referred to the “wilful disobedience of any lawful order of a superior court” as a ground for suspension or disbarment – had no application because the Secretary of Justice was not a superior court; that the filing of the motion for reconsideration was done in good faith inasmuch as the respondents believed

² Id. at 22-24.

³ Id. at 397-407.

⁴ Section 27. Disbarment or suspension of attorneys by Supreme Court; grounds therefor. — A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, **or for a willful disobedience of any lawful order of a superior court**, or for corruptly or wilfully appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice. (As amended by Resolution of the Supreme Court, Feb. 13, 1992).

that the motion was the best course of action to take in light of the new evidence in the form of the complainant's own extrajudicial confession; and that the respondents no longer needed to comply with the directive of the Secretary of Justice to cause the withdrawal of the information considering that the RTC had meanwhile issued its order directing the pre-trial to proceed and the trial to be held continuously thereafter until the case was terminated.⁵

In Resolution No. XX-2012-202 passed on June 13, 2012,⁶ the IBP Board of Governors unanimously adopted and approved the Report and Recommendation of the Investigating Commissioner, and upheld the dismissal of the complaint for lack of merit.

On April 15, 2013, the IBP Board of Governors passed Resolution No. XX-2013-418⁷ unanimously denying the complainant's motion for reconsideration and affirming Resolution No. XX-2012-202.

The IBP Board of Governors then forwarded the case to the Court as required by Section 12(b), Rule 139-B⁸ of the *Rules of Court*.

Ruling of the Court

We affirm the findings of the IBP Board of Governors.

The complainant argues that the resolution issued by the Secretary of Justice directing the withdrawal of the information against him exonerated him from all charges, thereby warranting his immediate release from detention, was a proper basis for bringing the complaint for disbarment against the respondents upon learning that they had filed the motion for reconsideration. In support of his complaint, he cites Section 27, Rule 138 of the *Rules of Court*, which provides:

Section 27. *Disbarment or suspension of attorneys by Supreme Court; grounds therefor.* — A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, **or for a willful disobedience of any lawful order of a superior court**, or for corruptly or wilfully appearing as

⁵ *Rollo*, p. 91.

⁶ *Id.* at 396.

⁷ *Id.* at 461.

⁸ Section 12(b). If the Board, by the vote of a majority of its total membership, determines that the respondent should be suspended from the practice of law or disbarred, it shall issue a resolution setting forth its findings and recommendations which, together with the whole record of the case, shall forthwith be transmitted to the Supreme Court for final action.

an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice. (As amended by Resolution of the Supreme Court, Feb. 13, 1992).

The complainant's reliance on Section 27 was obviously misplaced. The observation of the Investigating Commissioner that the Secretary of Justice was not the same as the superior court referred to by the rule was correct. As such, the filing by the respondents of the motion for reconsideration was not a defiance or wilful disobedience to the lawful order of the superior court.

A further consideration in favor of the respondents is that they were expected as public prosecutors whose sworn duty was to prosecute crimes to the best of their abilities in order to protect the interest of the people to do everything within the bounds of the law to discharge such duty. Their filing of the motion for reconsideration was a valid recourse for them to prevent the withdrawal of the information against the complainant considering that the new evidence consisting of the complainant's own extrajudicial confession had not been brought to the attention of the Secretary of Justice. It is worthy of mention in this connection that the respondents even enjoyed the presumption of regularity in the performance of their official duties as far as the filing of the motion for reconsideration was concerned. Accordingly, there was no justification on the complainant's part to impute to them any fraudulent intent.

At any rate, it was not the Secretary of Justice who would ultimately determine whether the information against the complainant, among others, would be withdrawn or not. This was because the RTC as the trial court already acquired jurisdiction over the criminal case. As such, the decision whether or not to allow the withdrawal of the information upon motion of the public prosecutor in compliance with the directive of the Secretary of Justice then pertained to the RTC. Such jurisdiction of the RTC was exclusive, for, as held in *Crespo v. Mogul*:⁹

The rule therefore in this jurisdiction is that once a complaint or information is filed in Court any disposition of the case as its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court. **Although the [public prosecutor] retains the direction and control of the prosecution of criminal cases even while the case is already in Court he cannot impose his opinion on the trial court. The Court is the best and sole judge on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence.**

⁹ *Crespo v. Mogul*, No. L-53373, June 30, 1987, 151 SCRA 462, 471.

Verily, the RTC could grant or deny the motion to withdraw the information not out of subservience to the Secretary of Justice but in faithful exercise of its judicial prerogative.¹⁰ In that regard, we note that the RTC ultimately denied the motion to withdraw the information and directed the pre-trial to proceed.

This proceeding for disbarment cannot be the occasion to impeach the respondents' filing of the motion for reconsideration. The issues that the complainant raised against such filing and any other matters incidental to such filing should have been raised only in the trial court, or in the proper office. We cannot allow the trivialization of the sanction of disbarment by the complainant. He should be reminded that disbarment is the most severe form of disciplinary sanction against a misbehaving member of the Integrated Bar; as such, the power to disbar is always exercised with great caution only for the most imperative reasons and in cases of clear misconduct affecting the standing and moral character of the lawyer as an officer of the court and member of the bar.¹¹

Based on all the established attendant circumstances, the complainant had no legal or factual basis for his disbarment complaint against the respondents. The case involved their official acts as public prosecutors, focusing on how they had proceeded in a pending matter that was entirely within their official competence and responsibility. How they could be held answerable or accountable as lawyers for their official acts escapes us, but at least the Court now gives them some consolation by dismissing the disbarment proceedings as unworthy and devoid of substance.

We deem it timely and appropriate to remind that administrative proceedings brought against lawyers, including those in the public service, to make them be accountable for their acts or omissions in the exercise of their profession are not alternatives to reliefs that may be sought and obtained from the proper offices or agencies. The Court will exercise its disciplinary power only by observing due process and if the lawyer's administrative guilt is proved by clear, convincing, and satisfactory evidence. This norm is aimed at preserving the integrity and reputation of the Law Profession, and at shielding lawyers, in general, due to their being officers themselves of the Court. Any complaint for disbarment or other disciplinary sanction brought against lawyers that is based on frivolous matters or proof, like this case, should be immediately dismissed because its plain objective is to harass or get even with the respondent. The public must be reminded that lawyers are professionals bound to observe and follow the strictest ethical canons, and to subject them to frivolous, unfounded and vexatious charges of misconduct and misbehavior is to do a disservice to the

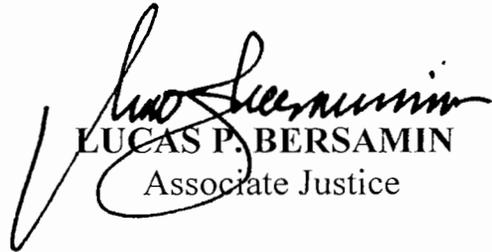
¹⁰ *Roberts, Jr. v. Court of Appeals*, G.R. No. 113930, March 5, 1996, 254 SCRA 307, 334.

¹¹ *Heck v. Gamotin, Jr.*, A.C. No. 5329, March 18, 2014, 719 SCRA 339, 345-346; citing *Kara-an v. Pineda*, A.C. No. 4306, March 28, 2007, 519 SCRA 143, 146.

ideals of justice, and to disregard the Constitution and the laws to which all lawyers vow their enduring fealty.

WHEREFORE, the Court **ABSOLVES** respondents Atty. Palmarin E. Rubio and Atty. Nicasio T. Rubio of the charges of gross misconduct; and **DISMISSES** the complaint for disbarment for utter lack of merit and substance.

SO ORDERED.


LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:



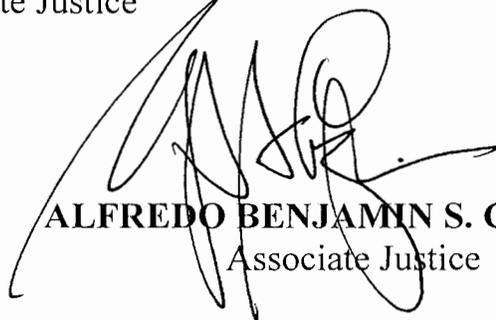
MARIA LOURDES P. A. SERENO
Chief Justice



TERESITA J. LEONARDO-DE CASTRO
Associate Justice



ESTELA M. PERLAS-BERNABE
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice