



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **02 December 2020** which reads as follows:*

“**A.C. No. 12882** (*Felicidad Malute v. Atty. Jerome W. Selmo*). – The Court **NOTES** the Integrated Bar of the Philippines (*IBP*) Board of Governors’ (*Board*) (1) Notice of Resolution No. XXII-2016-196 dated February 25, 2016 which reversed the findings of facts and recommendation of dismissal by the Investigating Commissioner, and imposed upon Atty. Jerome W. Selmo (*respondent*) a penalty of one (1) year suspension from the practice of law for ignoring IBP proceedings and for the gravity of the offense committed; and (2) Notice of Resolution dated June 18, 2019 which resolved to deny respondent’s motion for reconsideration and *motu proprio* modify the penalty to reprimand.

In a verified Affidavit-Complaint,¹ dated September 27, 2012 and filed before the IBP, Commission on Bar Discipline (*CBD*), Felicidad Malute (*complainant*) charged respondent with violation of: (a) the Lawyer’s Oath; (b) Rule 8.01 of the Code of Professional Responsibility (*CPR*); and (c) for such other administrative cases as may be warranted by the facts.² Complainant averred that respondent was unprofessional and was a disgrace to the legal profession.

Antecedents

Complainant was the attorney-in-fact of Angeline Laking, defendant in an action for specific performance which was scheduled for a mediation conference. Herein respondent was the plaintiff’s counsel.³

¹ *Rollo*, pp. 4-6.

² *Id.* at 4.

³ *Id.*

On the day of the mediation conference, complainant was accompanied by her husband at the Philippine Mediation Center (*PMC*) in La Trinidad, Benguet. While waiting thereat, complainant and her husband saw their counsel talking to respondent inside the mediation office. They proceeded inside the office when their lawyer gestured them to do so. There, complainant heard their lawyer tell respondent that he was the improper party to answer respondent's queries.⁴

When respondent saw complainant, and without any provocation, he suddenly shouted, scolded, berated, and humiliated the latter inside the mediation office. Complainant's husband approached them, but he, too, was scolded, berated, and humiliated by respondent. Complainant's husband politely answered him, however, respondent shouted back and threatened to shoot complainant's husband.⁵

Complainant's husband left the office to avoid respondent. Respondent followed him, pointed his finger at him, and seemed to draw something from his waist while simultaneously threatening the latter in the vernacular, saying "come here so I can shoot you."⁶

Consequently, complainant filed a complaint for grave threats against respondent before the Office of the Provincial Prosecutor but it was dismissed in a Resolution⁷ dated August 3, 2012.

IBP Report and Recommendation

In the proceedings before the IBP, respondent did not file any Answer despite due notice and the directive to do so. The IBP later directed both parties to submit their respective position papers, but neither submitted such.⁸ Thus, there was no explanation or defense placed on record.

Regardless, the IBP proceeded with the resolution of the complaint. It was, however, doubtful that respondent's threatening remarks alone were violative of the Lawyer's Oath or of Rule 8.01, Canon 8 of the CPR. Particularly, the IBP opined that:

⁴ Id.

⁵ Id.

⁶ Id.

⁷ Id. at 14.

⁸ Id. at 33.

We really fail to see how that verbal utterance that had in fact already generated the filing of a formal complaint in a different forum could translate into something scandalous that would by itself compromise respondent's effectivity as counsel. What may have been said could be offensive *per se* but in the light of the parties' disconcerting views about what was right or wrong in connection with the causes that they espouse, it is extremely difficult to render respondent's use of language ascribed to him could give rise to rendering him liable for the extreme sanction that complainant prays.⁹

Therefore, in its Report and Recommendation¹⁰ in CBD Case No. 13-3771, dated July 24, 2015, the IBP Investigating Commissioner recommended the dismissal of the complaint for insufficiency of evidence. Respondent was, however, admonished and warned that a repetition of a similar incident in the future may warrant a more severe consequence.¹¹

Consequently, the IBP, through the CBD Deputy Director, issued an Extended Resolution on Review¹² recommending the imposition upon respondent of the penalty of suspension from the practice of law for a period of one (1) month, with a warning that a repetition of the same or similar conduct shall warrant a more severe penalty.¹³

After a review of the evidence, the IBP was convinced that respondent committed a breach of Rule 8.01 of the CPR, which states that:

Rule 8.01. – A lawyer shall not, in his professional dealings, use language which is abusive, offensive, or otherwise improper.

When respondent, unprovoked, shouted, scolded, and berated complainant, as well as threatened complainant's husband with bodily harm, the former acted in a manner unexpected of the practitioners of the legal profession.¹⁴ Further, respondent's failure and refusal to abide by the IBP's Order despite due notice indicated his lack of respect for the IBP's rules and procedures.¹⁵

⁹ Id. at 35.

¹⁰ Id. at 33-35.

¹¹ Id. at 35.

¹² Id. at 36-40.

¹³ Id. at 40.

¹⁴ Id. at 37-38.

¹⁵ Id. at 38-39.

Thus, in its February 25, 2016 Resolution No. XXII-2016-196¹⁶ the IBP Board reversed the findings of facts and recommendation of dismissal by the Investigating Commissioner. Instead, the IBP Board imposed a penalty of one (1) year suspension from the practice of law against the respondent considering that he had ignored IBP proceedings, and the gravity of the offense he committed.¹⁷

Respondent then filed a Motion for Reconsideration.¹⁸ He claimed that complainant executed an Affidavit of Desistance¹⁹ and wrote the CBD for the disposition of the case. He likewise averred that he filed a Manifestation in relation to complainant's affidavit. Due to the said events, respondent did not file his Answer anymore. He further asserted that complainant no longer substantiated her allegations in the complaint because of a settlement. There was, thus, no basis in the finding of guilt against him.²⁰

The IBP Board, in a Resolution²¹ dated June 18, 2019, denied respondent's Motion for Reconsideration. However, it *motu proprio* modified the penalty of one (1) year suspension from the practice of law imposed upon respondent to reprimand.

The Court's Ruling

Respondent displayed acts unbecoming of a lawyer, and thus, shall be meted out with the appropriate disciplinary sanction despite desistance from the complainant.

Disciplinary proceedings against lawyers are *sui generis* in that they are neither purely civil nor purely criminal; they involve investigations by the court into the conduct of one of its officers, not the trial of an action or a suit.²² The only issue is whether the officer of the court is still fit to be allowed to continue as a member of the Bar. Our only concern is the determination of respondent's administrative liability.²³

In this case, respondent humiliated the complainant in public by unnecessarily shouting at and scolding the latter without provocation.

¹⁶ Id. at 32.

¹⁷ Id.

¹⁸ Id. at 41-42.

¹⁹ Id. at 48.

²⁰ Id. at 41.

²¹ Id. at 53.

²² *Ylaya v. Gacott*, 702 Phil. 390, 406-407 (2013).

²³ *Sosa v. Mendoza*, 756 Phil. 490, 500 (2015), citing *Heenan v. Atty. Espejo*, 722 Phil. 528, 537 (2013).

Respondent also humiliated and even threatened the complainant's husband who was merely approaching them at the time of the incident.

Contrary to respondent's argument, the Affidavit of Desistance filed by complainant does not automatically amount to a ground for dismissal of the administrative complaint against him. It has been held that the filing of an Affidavit of Desistance by the complainant for lack of interest does not *ipso facto* results in the termination of an administrative case for suspension or disbarment of an erring lawyer.²⁴

Consequently, complainant's affidavit did not obliterate the fact that respondent's utterances and threats were undoubtedly acts unbecoming of a lawyer. Although the unnecessary remarks and threats were allegedly a result of respondent's emotional outbursts, as stated in complainant's Affidavit of Desistance, the same is not sufficient excuse for respondent's inappropriate behavior. Clearly, respondent violated Rule 8.01, Canon 8 of the CPR for using abusive, offensive or otherwise improper language in his professional dealings.

Moreover, not only did respondent exhibit acts unbecoming of a lawyer, but records also show that he likewise did not respect the proceedings in the IBP and its officials, who are "officers of the court." Even if complainant desisted from pursuing her administrative complaint, respondent should not have simply ignored the directives of the IBP. As a lawyer, he ought to know the importance of compliance with such orders.

When lawyers, in the performance of their duties, act in a manner that prejudices not only the rights of their client, but also of their colleagues and offends due administration of justice, appropriate disciplinary measures and proceedings are available such as reprimand, suspension or even disbarment to rectify their wrongful acts.²⁵

In sum, We have consistently stressed that the Court can still impose disciplinary sanctions despite any withdrawal, desistance, or forgiveness by complainants who are merely witnesses to the inappropriate behavior of erring lawyers. In *Escalona v. Padillo*,²⁶ We explained that:

This Court has an interest in the conduct and behavior of its officials and employees and in ensuring at all times the proper delivery of justice to the people. No affidavit of desistance can divest this Court of

²⁴ *Yumul-Espina v. Atty. Tabaquero*, 795 Phil. 653, 660 (2016); citation omitted.

²⁵ *Ret. Judge Alpajora v. Calayan*, 823 Phil. 93, 107-108 (2018).

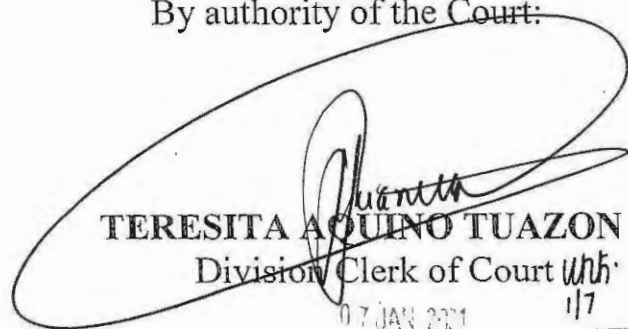
²⁶ 645 Phil. 263 (2010).

its jurisdiction under Section 6, Article VIII of the Constitution to investigate and decide complaints against erring officials and employees of the judiciary. **The issue in an administrative case is not whether the complainant has a cause of action against the respondent, but whether the employee has breached the norms and standards of the courts.** Neither can the disciplinary power of this Court be made to depend on a complaint's whims. To rule otherwise would undermine the discipline of court officials and personnel. The people, whose faith and confidence in their government and its instrumentalities need to be maintained, should not be made to depend upon the whims and caprices of **complainants** who, in a real sense, **are only witnesses. Administrative actions are not made to depend upon the will of every complainant who may, for one reason or another, condone a detestable act. Such unilateral act does not bind this Court on a matter relating to its disciplinary power.**²⁷ (emphases supplied; citations omitted)

WHEREFORE, respondent Atty. Jerome W. Selmo is **REPRIMANDED** for violating the Lawyer's Oath and Rule 8.01, Canon 8 of the Code of Professional Responsibility and is **STERNLY WARNED** that a repetition of the same or similar conduct in the future will warrant a more severe penalty.

SO ORDERED. (Perlas-Bernabe, *J.*, on official leave; Rosario, *J.*, designated additional member per Special Order No. 2797 dated November 5, 2020)"

By authority of the Court:


TERESITA AQUINO TUAZON
Division Clerk of Court *wh*
07 JAN 2021 17

²⁷ Id. at 267-268.

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