



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated October 5, 2022, which reads as follows:

“A.C. No. 11923 [Formerly CBD Case No. 19-6052] (*Julito D. Vitriolo v. Atty. Septon A. Dela Cruz*). — Before Us is a Complaint¹ for Disbarment filed by Julito D. Vitriolo (Vitriolo) against Atty. Septon A. Dela Cruz (Atty. Dela Cruz) for violation of Section 27, Rule 138 and Rule 140² of the Revised Rules of Court, and Canon 1, Canon 12, and Rule 12.04 of the Code of Professional Responsibility (CPR).

The Facts

On December 29, 2016, Vitriolo was dismissed as the Executive Director of the Commission on Higher Education (CHED) by the Office of Ombudsman (OMB) in OMB-C-A-15-2017 for Gross Neglect of Duty, Grave Misconduct, Inefficiency, and Incompetence in the performance of official duties. He appealed his dismissal to the Court of Appeals (CA) and the case was docketed as CA-G.R. SP No. 149063 entitled “Julito D. Vitriolo vs. Oliver B. Felix.” During the pendency of Vitriolo’s appeal, then President Rodrigo R. Duterte (President Duterte) appointed Karol Mark R. Yee (Yee) as Executive Director of CHED and the latter assumed said position on July 19, 2017.³

In its August 17, 2017 Decision,⁴ the CA modified the decision of the OMB in OMB-CA-15-2017 by setting aside Vitriolo’s dismissal and imposing instead a penalty of suspension for 30 days. The CA also ordered Vitriolo’s

¹ *Rollo*, pp. 1-19.

² As amended by A.M. No. 01-8-10-SC, Re: Proposed Amendment to Rule 140 of the Rules Of Court Re: Discipline of Justices and Judges. Effective on October 1, 2001.

³ *Rollo*, pp. 115-116.

⁴ *Id.* at 21-48.

immediate reinstatement to his former position as Executive Director without loss or diminution of salaries and benefits.⁵

On August 29, 2017, Vitriolo, through counsel, sent a Memorandum⁶ to the members of CHED requesting their immediate compliance with the CA decision. He also furnished a copy of the CA's Decision to the various offices of CHED.

On August 30, 2017, the four Commissioners of CHED sent a letter⁷ to the Executive Secretary requesting guidance on the necessary steps to be taken in view of then President Duterte's appointment of Yee as CHED's Executive Director, and the subsequent CA decision reinstating Vitriolo to his position as CHED's Executive Director. While waiting for a response from the Executive Secretary, CHED Chairperson Patricia B. Licuanan (Chairperson Licuanan) issued a Memorandum⁸ dated September 4, 2017 maintaining the status *quo* and recognizing Yee as the Executive Director. Subsequently, Vitriolo sent a letter to Chairperson Licuanan requesting for the recall of her Memorandum.⁹

On September 7, 2017, Vitriolo issued a Memorandum¹⁰ addressed to all Central and Regional Office Directors, Officers-In-Charge, and staff invoking his authority as the proper signatory of official documents pertaining to the office as he had already assumed his former position.

On September 13, 2017, Oliver B. Felix (Felix) filed a Motion for Reconsideration¹¹ of the CA's August 17, 2017 Decision in CA-G.R. SP No. 149063.

On September 16, 2017, the Office of the President, through Acting Executive Secretary Menardo I. Guevarra sent a letter¹² to the CHED Commissioners, which provides in part:

In a survey of cases where a decision or order for the Ombudsman was appealed to the CA, and thereafter to the Supreme Court, the latter has consistently held that absent any writ of injunction or temporary restraining order, the decision or order of the Ombudsman remains executory notwithstanding any other decision of the CA which has not yet attained finality.

Notwithstanding the foregoing, this Office shall defer to your judgment on this matter, considering that the same falls under the purview of the Commission's day-to-day administration and internal operations.

⁵ Id. at 47.

⁶ Id. at 125-126.

⁷ Id. at 127-128.

⁸ Id. at 129.

⁹ Id. at 54-55.

¹⁰ Id. at 49-50.

¹¹ Id. at 130-142.

¹² Id. at 143-144.

For your information and guidance.¹³

On September 19, 2017, Atty. Dela Cruz, Officer-in-Charge of the CHED Legal and Legislative Service, sent an Opinion¹⁴ to the members of the Board of CHED, the pertinent part thereof reads:

In view of all the above, Atty. Julito D. Vitriolo should not be allowed to return to his post as Executive Director of the Commission on Higher Education as the decision of the Court of Appeals is not yet final and executory.¹⁵

On December 1, 2017, Vitriolo lodged his Complaint for disbarment of Atty. Dela Cruz with this Court. He contends that Atty. Dela Cruz rendered an erroneous opinion and failed to properly advise CHED, which is a serious violation of the principle of separation of powers by and between the Judiciary and the Executive.¹⁶ He argues that any further interpretation of the CA Decision encroaches upon the power of the Judiciary. Additionally, he claims that Atty. Dela Cruz employed dilatory tactics to impede the implementation of the CA's Decision.¹⁷

On the other hand, Atty. Dela Cruz asserts that his opinion is based on law and jurisprudence. Citing Rule VII of the 2009 Internal Rules of the Court of Appeals,¹⁸ he argues that the CA's Decision has not yet attained finality in view of the motion for reconsideration filed by Felix which stayed the execution of the CA Decision. Consequently, Vitriolo is not entitled to be immediately reinstated to his former position. Moreover, Atty. Dela Cruz points out that his opinion on the matter is the same as those issued by the Office of the President,¹⁹ Office of the Solicitor General,²⁰ and the Office of Ombudsman.²¹ All told, Atty. Dela Cruz maintains that he acted within the bounds of law and as expected of him as a lawyer when he rendered his opinion to the CHED Commission *En Banc*.²²

On January 29, 2018, the CA denied²³ the motion for reconsideration filed by Felix in CA-G.R. SP No. 149063. When the case reached the Supreme Court (docketed as G.R. No. 237582), this Court affirmed the CA's findings and the decision attained finality on August 15, 2019.

¹³ Id. at 144.

¹⁴ Id. at 150-151.

¹⁵ Id. at 151.

¹⁶ Id. at 3-6.

¹⁷ Id. at 9-12.

¹⁸ SEC. 1. *Entry of Judgment*. — Unless a motion for reconsideration or new trial is filed or an appeal taken to the Supreme Court, judgments and final resolutions of the Court shall be entered upon expiration of fifteen (15) days from notice to the parties. x x x

¹⁹ *Rollo*, pp. 143-144.

²⁰ Id. at 157-159.

²¹ Id. at 155-156.

²² Id. at 330-333.

²³ Id. at 88-97.

Report and Recommendation of the Integrated Bar of the Philippines (IBP):

In a Report and Recommendation²⁴ dated December 15, 2020, Investigating Commissioner Jose Villanueva Cabrera (Commissioner Cabrera) found that Atty. Dela Cruz did not violate the Lawyer's Oath, Rules of Court, and the CPR. Commissioner Cabrera likewise found no malice, gross ignorance of the law, or any other improper motive which may have tainted the Opinion issued by Atty. Dela Cruz. The recommendation reads:

WHEREFORE, premises considered, it is respectfully recommended that the administrative charges against respondent **ATTY. SEPTON A. DELA CRUZ** be **DISMISSED** for lack of merit.

RESPECTFULLY SUBMITTED.²⁵

The IBP Board of Governors then passed a Resolution²⁶ dated November 19, 2021 adopting the findings of fact and recommendation of Commissioner Cabrera to dismiss the complaint against Atty. Dela Cruz.

Our Ruling

The Court adopts the findings and approves the recommendation of the IBP to dismiss the disbarment complaint against Atty. Dela Cruz for lack of merit.

It must be stressed that in disbarment proceedings, complainants bear the burden of proving the allegations in their complaints by substantial evidence.²⁷ In this case, Vitriolo failed to establish through substantial evidence that Atty. Dela Cruz transgressed his duties as a lawyer by advising the members of the Board of CHED that Vitriolo should not be allowed to return to his post as Executive Director of CHED despite the CA's Decision ordering the latter's reinstatement.

At the outset, it bears noting that Rule 140 of the Revised Rules of Court, as amended by A.M. No. 01-8-10-SC,²⁸ cited by Vitriolo, covers rules on the discipline of Justices and Judges,²⁹ placing a lawyer like Atty. Dela Cruz outside the ambit of such rule.

On the other hand, Section 27, Rule 138 of the Rules of Court provides:

²⁴ Id. at 423-436.

²⁵ Id. at 436.

²⁶ Id. at 421-422.

²⁷ *Tan v. Atty. Alvarico*, A.C. No. 10933, November 3, 2020, citing *BSA Tower Condominium Corporation v. Atty. Reyes*, 833 Phil. 588, 594 (2018); *Zara v. Atty. Joyas*, A.C. No. 10994, June 10, 2019.

²⁸ As further amended by A.M. No. 21-08-09-SC, Further Amendments to Rule 140 of the Rules of Court. Dated February 22, 2022.

²⁹ Now covers the discipline of members, officials, employees and personnel of the Judiciary.

SEC. 27. Disbarment or suspension of attorneys by Supreme Court; grounds therefor. — A member of the bar may be disbarred or suspended from his [or her] 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 [or her] conviction of a crime involving moral turpitude, or for any violation of the oath which he or she] is required to take before admission to practice, **or for willful disobedience of any lawful order of a superior court**, or for corruptly or willfully 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. (Emphasis supplied)

The argument that Atty. Dela Cruz willfully disobeyed the CA's Decision which ordered Vitriolo's reinstatement is without merit. As correctly pointed out by the IBP, the CA's Decision reinstating Vitriolo was not yet final and executory at the time the instant complaint for disbarment was filed on December 1, 2017. Under the Rules, the filing of a Motion for Reconsideration stays the execution of the CA's Decision, *viz.*:

Section 4. **Stay of execution.** — The pendency of a motion for reconsideration filed on time and by the proper party shall stay the execution of the judgment or final resolution sought to be reconsidered unless the court, for good reasons, shall otherwise direct.³⁰

Since a motion for reconsideration was filed by Felix and there was no directive from the CA that its decision shall otherwise be immediately executory, the execution of the CA's Decision was effectively stayed. Consequently, Vitriolo was not entitled to be immediately reinstated to his former position. As clarified in *Office of the Ombudsman v. Delos Reyes, Jr.*,³¹ “[u]nlike the Office of the Ombudsman’s Decision, however, the Court of Appeals Decision and Resolution reinstating respondent in his position and ordering the payment of back salaries and other benefits were not immediately executory, and were subject to appeal to this court via Rule 45 of the Rules of Court.”³²

Moreover, in *Tung Ho Steel Enterprises Corp. v. Ting Guan Trading Corp.*,³³ this Court held that:

Under the Rules of Court, entry of judgment may only be made if no appeal or motion for reconsideration was timely filed. **In the proceedings before the CA, if a motion for reconsideration (including a partial motion for reconsideration) is timely filed by the proper party, execution of the CA's judgment or final resolution shall be stayed.** This rule is applicable even to proceedings before the Supreme Court, as provided in Section 4, Rule 56 of the Rules of Court.

³⁰ RULES OF COURT, Rule 52, Sec. 4.

³¹ 781 Phil. 297 (2016).

³² *Id.* at 316.

³³ 731 Phil. 446 (2014).

In the present case, Tung Ho timely filed its motion for reconsideration with the CA and seasonably appealed the CA's rulings with the Court through the present petition (G.R. No. 182153).³⁴ (Citations omitted, emphasis supplied)

Indubitably, Atty. Dela Cruz's legal opinion that Vitriolo was not yet entitled to be reinstated to his former position unless the decision became final and executory is in accordance with law and jurisprudence.

In addition, the Court finds that Atty. Dela Cruz did not violate the Lawyer's Oath or Canons 1 and 12, and Rule 12.04 of the CPR, to wit:

CANON 1 - A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND FOR LEGAL PROCESSES.

CANON 12 - A LAWYER SHALL EXERT EVERY EFFORT AND CONSIDER IT HIS DUTY TO ASSIST IN THE SPEEDY AND EFFICIENT ADMINISTRATION OF JUSTICE.

Rule 12.04 - A lawyer shall not unduly delay a case, impede the execution of a judgment or misuse Court processes.

In rendering his Opinion, Atty. Dela Cruz cannot be considered to have employed dilatory tactics or committed an act to delay the administration of justice since his Opinion is well-supported by law and jurisprudence as discussed above. That Atty. Dela Cruz's Opinion is adverse to Vitriolo does not, by itself, establish malice or prejudice against him.

In sum, We find nothing substantial in the allegations to warrant the imposition of disciplinary action against Atty. Dela Cruz. It bears stressing that lawyers enjoy the legal presumption of innocence over the charges against them until the contrary is proven.³⁵ As officers of the court, lawyers are presumed to have performed their duties in accordance with their oath.³⁶ As such, this Court exercises its power to disbar with great caution and will only wield its power to disbar in clear cases of misconduct that seriously affect the standing and character of the lawyer as an officer of the court and as member of the bar, or the misconduct borders on the criminal, or committed under scandalous circumstance.³⁷

WHEREFORE, the administrative complaint against respondent **ATTY. SEPTON A. DELA CRUZ** is hereby **DISMISSED** for lack of merit.

The Notice of Resolution No. CBD-XXV-2021-11-18 dated November 19, 2021 of the Integrated Bar of the Philippines' Board of Governors,

³⁴ Id. at 461.

³⁵ Supra note 27.

³⁶ Id.

³⁷ *Rodco Consultancy and Maritime Services Corporation, v. Atty. Concepcion*, A.C. No. 7963, June 29, 2021, citing *Ko v. Atty. Maduramante*, A.C. No. 11118, July 14, 2020.

transmitted by letter dated March 1, 2022 of Atty. Avelino B. Sales, Jr., Director for Bar Discipline, Integrated Bar of the Philippines, together with the records and flash drive file, is **NOTED**.

SO ORDERED.” *Marquez, J., on official leave.*

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *m. u. m.*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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OCT 13 2022

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