



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated June 14, 2023, which reads as follows:

“A.C. No. 11947 [Formerly CBD Case No. 18-5735] (Darwin Yu, *Complainant*, versus Atty. Mariano Jesus S. Averia, *Respondent*). – The Notice of Resolution No. CBD-2021-03-03¹ dated March 13, 2021, of the Integrated Bar of the Philippines (IBP) Board of Governors, transmitted by Letter² dated November 9, 2021, of Atty. Avelino V. Sales, Jr., Director for Commission on Bar Discipline, together with the records of the case and flash drive file, is **NOTED**.

Stripped to its non-essentials, the facts are as follows:

Darwin Yu (complainant) was dismissed by his employer on the basis of his serious misconduct, specifically, sexual harassment of a female subordinate employee. Aggrieved, he filed a complaint for illegal dismissal.³ Complainant alleged that during the preliminary hearing of the case, Atty. Mariano Jesus S. Averia (respondent) pointed his fingers at him and uttered the words “go to hell” when he asked for ₱300,000.00 as the settlement amount for his illegal dismissal.⁴

For his part, respondent denied the allegations against him and pointed out that the accusation is not supported by any evidence; hence, it is self-serving.⁵ He added that he spoke in the presence of another colleague, Atty. Golda Julia S. Gapuz,⁶ who in an affidavit⁷ dated October 15, 2018, stated that respondent conducted himself in a very professional manner during the preliminary conference. She likewise attested that respondent did not utter the words “you can go to hell,” nor

¹ Rollo, pp. 212-213.

² Id. at 211.

³ Docketed as NLRC Case No. NCR-09-13520-17 and entitled “Darwin Fontanilla Yu v. Infinit-O Global Limited, Manolo Aquino, Richard Eldridge, Cielito Bacloy”; id. at 21. Referred to as “Cielito Bacloy” in some parts of the rollo (see id. at 214).

⁴ Id. at 2 and 215.

⁵ Id. at 17.

⁶ Id. at 86.

⁷ Id. at 129-130.

point his fingers (“*duro*”).⁸

In the Report and Recommendation⁹ dated February 19, 2020, Investigating Commissioner Atty. Carmelita R. Eleazar (Investigating Commissioner) held that complainant was not able to satisfactorily prove that respondent acted in an unethical manner, and accordingly, recommended the dismissal of the complaint for lack of merit.¹⁰

Moreover, the Investigating Commissioner added:¹¹

[A]ssuming that respondent lawyer uttered ‘go to hell’ when he refused the demand of the complainant, *such utterance should be assessed in the context of complainant’s lack of remorse upon being confronted with the sexual innuendos of the [S]kype messages he sent to a female subordinate employee. Atty. Averia’s choice of words could hardly be considered “personal,” especially in the light of the heightened emotion brought about by the complainant’s misogynistic attitude and his demand of a big amount for settlement.*

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The Code of Professional Responsibility explicitly provides that a lawyer owes fidelity to the cause of his client. *Respondent herein as counsel for a case which involves sexual harassment of a female subordinate employee could not be expected to act any less or even gentler than what he was accused of doing.*

While Rule 8.01 of the CPR ensures a modicum of responsibility in a lawyer’s speech or expression, a prescribed legal standard that conveniences the easy proliferation of administrative complaint against lawyers, inhibits a lawyer to speak and argue freely for the cause of his client.

IV. Recommendation –

Based on the foregoing, the undersigned recommends the dismissal of the above-docketed administrative case for disbarment against Atty. Mariano Jesus S. Averia for lack of merit.¹²

Considering that the findings of fact, conclusions of law, and recommendation of the Investigating Commissioner in the attached Report and Recommendation dated February 19, 2020, as approved and adopted by the IBP Board of Governors in its Resolution dated March 13, 2021, are supported by the evidence on record and by applicable laws, the Court **ADOPTS** and **APPROVES** the findings and recommendation and resolves to **DISMISS** the complaint against respondent Atty. Mariano Jesus S. Averia for lack of merit.

⁸ Id. at 129.

⁹ Id. at 214–217.

¹⁰ Id. at 217.

¹¹ Id. at 216.

¹² Id. at 216–217.

Accordingly, the case is considered **CLOSED** and **TERMINATED**.

SO ORDERED.”

By authority of the Court:

Mis D C Batt
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court *ph/n*

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