



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 4, 2023, which reads as follows:

“A.C. No. 9358 (Hon. Medel Arnaldo B. Belen v. Atty. Alvin M. Exconde). – This resolves the complaints¹ for disbarment filed by complainant Judge Medel Arnaldo B. Belen (complainant) against respondent Attorney Alvin M. Exconde (respondent) for willful and wanton violation of his lawyer’s oath.

Antecedents

The complaints for disbarment stemmed from the death by hazing of Mr. Marlon Villanueva (Marlon), a neophyte of Alpha Phi Omega (APO) fraternity, University of the Philippines (UP) Theta Chapter.² As a result of the incident, two (2) proceedings were initiated, one before the University of the Philippines Los Baños Student Disciplinary Tribunal (UP Tribunal), while the second case refers to the criminal case filed before the Regional Trial Court (RTC).³ Respondent, who was also a member of the fraternity, appeared as counsel for the accused fraternity members in both proceedings.⁴

The first disbarment complaint (first disbarment complaint) refers to the proceedings conducted before the UP Tribunal, docketed as SDT Case No. 06-04. It was alleged that respondent, acting as counsel for the student respondents therein, willfully violated the Lawyer’s oath when he prepared

¹ *Rollo*, pp. 1-2; 9-10. See separate complaints both dated 25 January 2012.

² *Id.* at 181.

³ *Id.* at 190.

⁴ *Id.*

false affidavits and persuaded a witness and other members of the APO fraternity and sorority to sign such affidavits. It was also alleged that respondent allowed use of his farm in San Pablo City as hiding place of the involved APO members. Complainant attached the transcript of stenographic notes (TSN) dated 19 May 2006 in SDT Case No. 06-04,⁵ containing the testimony of therein complainants' witness, Irene Tan (Ms. Tan), which narrated respondent's alleged unethical acts.⁶

The second disbarment complaint (second disbarment complaint) pertains to criminal case entitled, "*People of the Philippines v. Dandy L Dungo and Gregorio A. Sibal, Jr.*" docketed as Crim. Case No. 13958-2006-C and raffled to Branch 36, RTC of Calamba City. Complainant was the presiding judge therein during the pendency of the case. Respondent, who appeared as counsel for the accused in the said case, withdrew his appearance after the admission of the prosecution's evidence.⁷

It was alleged that during the presentation of evidence for the defense, accused Gregorio Sibal, Jr. (Mr. Sibal, Jr.) took the witness stand. Upon complainant's clarificatory questioning, Mr. Sibal, Jr. testified that in one of their initial meetings, he informed respondent that he was present at the final initiation rites that resulted in Marlon's death. Despite this, respondent allegedly advised Mr. Sibal, Jr. to claim that he and his co-accused only stumbled upon Marlon's body after the latter was hit by a vehicle, and that they brought him to JP Rizal Memorial Medical Center in Calamba City for medical treatment. Respondent supposedly insisted that two (2) accused heed his advice despite their objection.⁸ Complainant submitted portions of TSN dated 8 April 2009 in Crim. Case No. 13958-06-C, showing Mr. Sibal's testimony against respondent.

In his defense, respondent alleged that the complaint was filed to harass him as he acted as opposing counsel in three (3) cases where complainant was the adverse party.⁹ Moreover, on the charge that he persuaded Ms. Tan to sign a false affidavit and lie in her testimony before the UP Tribunal, respondent countered that nowhere in the TSN does it say that it was respondent who prepared the alleged false affidavit.¹⁰ Likewise, the false affidavit referred to was not attached to the complaint. He also argued that Ms. Tan could not have lied and concealed the hazing incident as she was allegedly not present therein.¹¹

⁵ Id. at 11-22.

⁶ Id.

⁷ Id. at 181-182.

⁸ Id. at 182.

⁹ Id. at 27-28.

¹⁰ Id. at 26.

¹¹ Id.

Anent the charge that he allowed the use of his farm in San Pablo City as hiding place of the involved fraternity members, respondent argued that this could not have been possible because the two (2) accused were arrested on the same day that the hazing incident occurred. Furthermore, no warrants of arrest were issued against other persons involved in the incident.¹² Respondent also denied having personal knowledge of the cause of Marlon's death. He argued that it is his exclusive prerogative to choose what he deems as the proper legal defenses, and doing so is not a perversion of justice or an attempt to mislead the court. He also argued that no counsel in his right mind would develop defenses similar to that of the prosecution.¹³

Respondent also bewailed complainant's improper act of compelling his client to waive his right to lawyer-client privilege. He contended that during the subject hearing, Mr. Sibal, Jr. was not testifying on his confidential communication with respondent as his lawyer, yet he was forced by complainant to do so in the guise of asking clarificatory questions. While he conceded that the rule on privileged communications was established for the protection of the client who may waive the privilege, he argued that accused Mr. Sibal, Jr. was not even apprised of the concept of privileged communications and its effects if the same was waived.¹⁴

Finally, respondent made a counter-charge against complainant, praying that a disciplinary penalty be recommended against the latter for not acting with fairness and candor.¹⁵

The Court, in its Resolution¹⁶ dated 17 October 2016, resolved to dispense with the filing of the comment to the counter-complaint after complainant failed to file his comment despite the Court's directives.¹⁷ The counter-complaint was likewise referred to the Office of the Bar Confidant (OBC) for evaluation, report and recommendation, with the dismissal from the service of complainant.¹⁸ On 25 November 2016, the OBC issued its report and recommendation¹⁹ referring the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

Recommendation of the IBP

In the Report and Recommendation²⁰ dated 27 May 2019,

¹² Id.

¹³ Id. at 183.

¹⁴ Id.

¹⁵ Id.

¹⁶ Id. at 41-42.

¹⁷ Id. at 35, 37. See Court's Resolution dated 12 November 2012 and 09 July 2014.

¹⁸ A.M. RTJ-10-2216, 26 June 2012.

¹⁹ *Rollo*, pp. 43-45.

²⁰ Id. at 179-189.

Investigating Commissioner (IC) Atty. Stephanie M. Cas-Refina recommended respondent's suspension from the practice of law for six (6) months with stern warning.

As to the allegations in the second disbarment complaint, the IC found that respondent committed professional misconduct when he advised his former clients to present a false *alibi* as their defense in the criminal case.²¹ According to the IC, respondent's claim that it is his exclusive prerogative to choose the legal defenses for his client and which defenses are not perversions of justice nor an attempt to mislead the court, is a tacit admission that respondent indeed gave such advice to his former clients.²² On the other hand, as to the first disbarment complaint, the IC declared that based on the transcript of the proceedings before the UP Tribunal, there was no showing that respondent coordinated or participated in the execution of the false affidavits. Moreover, while Ms. Tan stated that she was advised to tell a specific version of the events, she did not name respondent as the counsel who made such advice. Thus, absent other positive evidence directly establishing complainant's claim, the IC stated that it cannot make a finding that respondent committed a misconduct therein.²³

The IBP Board of Governors (Board) resolved to reverse and set aside the IC's Report and Recommendation in its Resolution²⁴ dated 15 December 2019.

In an Extended Resolution²⁵ dated 14 September 2020, the Board also dismissed the second disbarment complaint for insufficiency of evidence. As to the first disbarment complaint, the Board fully agreed with the IC's findings that complainant was not able to support his claim that respondent induced the witness to lie in her testimony and execute false affidavits before the UP Tribunal. However, as to the second disbarment complaint, the Board was not convinced that respondent misled the court.²⁶ While respondent allegedly advanced a different version of the facts, specifically during the bail hearing, complainant failed to present evidence supporting his claim. He did not submit the criminal Information, and even the pertinent pages of the TSN taken during the hearing of the criminal case on 8 April 2009. Complainant's statement in the TSN that respondent induced the accused to claim that they only chanced upon the body of the victim near the gate of the JP Rizal Hospital is a statement made by complainant himself. He

²¹ Id. at 188.

²² Id. at 187.

²³ Id. at 184-185.

²⁴ Id. at 177-178.

²⁵ Id. at 190-197.

²⁶ Id. at 190-191.

never presented any TSN where testimony to this effect was supposedly made.²⁷

Thus, with the complainant's failure to substantiate his allegations, the Board recommended the dismissal of the case for insufficiency of evidence.²⁸

The case was thereafter transmitted to this Court for review.

Ruling of the Court

After a review of the arguments and evidence submitted by the parties, this Court concurs with and adopts the findings, but modifies the recommendation of the Board in its Extended Resolution dated 14 September 2020 as to the dismissal of the second disbarment complaint against respondent.

Respondent is liable for the infractions charged in the second disbarment complaint

In dismissing the second disbarment complaint for insufficiency of evidence, the Board held that complainant failed to substantiate his allegations specifically evidence showing that respondent advanced a falsehood before the court.²⁹

We beg to differ.

It is well established that in disbarment proceedings, the quantum of proof is substantial evidence and the burden of proof is on the complainant to establish the allegations in his complaint.³⁰ Substantial evidence is that amount of relevant evidence as a reasonable mind might accept as adequate to support a conclusion.³¹ In this case, this Court finds that there is substantial evidence to hold respondent administratively liable for the second disbarment complaint.

A perusal of the TSN dated 8 April 2009 taken during the clarificatory hearing of the criminal case shows that respondent advised his former clients to present a false *alibi* as their defense in the criminal case, thus:

²⁷ Id. at 194-195.

²⁸ Id. at 196-197.

²⁹ Id.

³⁰ *Tan v. Alvarico*, A.C. No. 10933, 3 November 2020.

³¹ *Ignacio v. Atty. Alviar*, A.C. No. 11482, 813 Phil. 782, 790 (2017).

"X x X.

COURT

Q And during the initial hearings of this case, you were present and of course heard and understood all his submissions to the Court were with your consent, would I be correct?

WITNESS

A Yes, Your Honor

Q And during those initial hearings, would I be correct to state and as will be reflected from the records, it was the claim of the defense counsel that the body of the decedent was merely picked up along or near the gate of the JP Rizal Hospital, was this the statement you related to him as the event that transpired?

A No, Your Honor

Q So, are you telling me sir that you told him this story and despite this, he deliberately misled the Court in those submissions? Before you answer [p]lease understand the question carefully because I will put your answer in the records. If your answer is "yes", I will report him to the IBP.

A What is your question, Your Honor?

Q My question is this, *sinabi mo na sinabi mo sa kanya na ito ang mga pangyayari, pero doon sa simula ng mga pag hi-hearing, ang sinabi ninyo sa Korte ay naiagpuan lamang ninyo ang katawan nung namatay malapit sa gate ng ospital. Bakit niya sinabi noong sa simula yun ay alam pala niya ang istorya?* Record will bear me out, if your answer is "yes", I will report him to the IBP for disciplinary proceedings.

A Your question, Your Honor.

Q My question is, *kung iyon ang totoong sinabi mo sa kanila, bakit iyon ang sinabi niya sa amin sa husgado sa simula?* Did you agree to that, did you and Mr. Dungo agree to your [defense's] counsel submission in application for bail? Look, Mr. Witness, I am telling you, I will report him to the IBP or Supreme Court for disciplinary proceedings.

A I don't know why he said it Your Honor, in fact on that very day, we had an argument.

Q Argument on what, sir?

WITNESS

A Immediately on January 14, 2006, my brod Dandy Dungo spoke

- over -

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with him on the telephone. I was not able to call him because my phone was already drained. So *nakausap ko siya sa* phone *ni* Dandy and he just told me and Dandy to just keep quiet, *siya ang bahala, pupuntahan ko kayo diyan sa may* police station and by 6:00 a.m., Atty Exconde arrived, your Honor.

COURT

Q Did you and Mr Dungo tell him what transpired as you narrated today to this Court?

A Actually I told him everything, in fact I was crying at that time because I never expected that we would be incarcerated, Your Honor.

Q So, are you telling the Court that as early as January 14 at around 6:00 in the morning, he was fully aware of your side or your version as narrated here today?

A Yes, Your Honor. I and Mr. Dungo informed Atty Exconde of the facts and events that transpired as I have narrated today in this Court. He, however, advised us to keep quiet and he would take control.

Q So, Mr. Witness, it is very clear now that Atty Exconde knew of your side of the story. And what he claimed to be was never true and it was quite and totally misleading to the Court that the body of Marlon Villanueva was found near the premises of JP Rizal Memorial Hospital?

A That's not true. Your Honor.

Q When this claim was made to the Court in the early stages of the proceedings, you and Mr. Dandy Dungo heard about it, did you tell him that his claim was false?

A When we advised him that that claim was false, we had an argument, still he told us to calm down and he would take control of the situation.

COURT

Q Mr. Witness, this false declaration about the false claim of Atty Exconde, was this really discussed and argued between you and your co-accused and Atty. Exconde, for the last time?

WITNESS

A Yes, Your Honor.

Q Mr. Witness, I am warning you that under your declaration, you clearly stated that Atty Exconde, a member of the Bar, deliberately misled and made fraudulent, if not, false claim before the Court. Do you understand that?

A I am just telling the truth, Your Honor.

COURT

Then I admire you, sir, for telling the truth on that matter. That will be all for the witness.

X X X³²

Respondent did not deny that he advised his clients to narrate a different version of the events that led to Marlon's death, but insisted that as the defense counsel, it was his prerogative to choose the legal defenses for his client.³³ As correctly pointed by the IC, this was a tacit admission that indeed he gave such advice to his clients.³⁴

It bears stressing that lawyers are obliged to present every available remedy or defenses to support the cause of their clients. However, their fidelity to their cause must always be made within the parameters of law and ethics, never at the expense of truth and justice.³⁵ Professional rules impose limits on a lawyer's zeal and hedge it with necessary restrictions and qualifications.³⁶

Clearly, respondent's act of inducing his clients to make a false statement before the court is violative of the Lawyer's oath which provides that a lawyer shall "not wittingly or willingly promote or sue any groundless, false or unlawful suit, nor give aid or consent to the same." Also, it is violative of Rule 1.01, Canon 10, Rule 10.01, Canon 12 of the Code of Professional Responsibility (CPR).

Rule 1.01 - A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

Canon 10 - A lawyer owes candor, fairness, and good faith to the court.

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.

Canon 12 - A lawyer shall exert every effort and consider it his duty to assist in the speedy and efficient administration of justice.

The new Code of Professional Responsibility and Accountability (CPRA),³⁷ which was approved on 11 April 2023 and made applicable to

³² *Rollo*, pp. 6-8, TSN dated 08 April 2009.

³³ *Id.* at 75.

³⁴ *Id.* at 187.

³⁵ *Heirs of the Late Herman Rey Romero v Atty. Reyes, Jr.*, AC No 6192, 499 Phil 624. (2005).

³⁶ *Avida Land Corp. v. Argosino*, A.C. No. 7437, 793 Phil 210. (2016).

³⁷ A.M No. 22-09-01-SC

pending cases,³⁸ repealed³⁹ the foregoing provisions and incorporated these Canons:

CANON II PROPRIETY

A lawyer shall, at all times, act with propriety and maintain the appearance of propriety in personal and professional dealings, observe honesty, respect and courtesy, and uphold the dignity of the legal profession consistent with the highest standards of ethical behavior.

SECTION 1. Proper conduct. — A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

SECTION 2. Dignified Conduct. — A lawyer shall respect the law, the courts, tribunals, and other government agencies, their officials, employees, and processes, and act with courtesy, civility, fairness, and candor towards fellow members of the bar.

x x x x

SECTION 5. Observance of Fairness and Obedience. — A lawyer shall, in every personal and professional engagement, insist on the observance of the principles of fairness and obedience to the law.

SECTION 8. Prohibition Against Misleading the Court, Tribunal, or Other Government Agency. — A lawyer shall not misquote, misrepresent, or mislead the court as to the existence or the contents of any document, argument, evidence, law, or other legal authority, or pass off as one's own the ideas or words of another, or assert as a fact that which has not been proven.

SECTION 10. Conduct in the Presentation of a Witness. — x x x
A lawyer shall not coach, abuse, discriminate against, or harass any witness, in or out of the court, tribunal, or other government agency, or talk to a witness during a break or recess in the trial, while a witness is still under examination. Neither shall a lawyer direct, assist, or abet any misrepresentation or falsehood by a witness.

SECTION 12. Duty to Report Dishonest, Deceitful, or Misleading Conduct. — A lawyer shall immediately inform a court, tribunal, or other government agency of any dishonest, deceitful or

³⁸ GENERAL PROVISIONS

SECTION 1. Transitory Provision. — The CPRA shall be applied to all pending and future cases, except to the extent that in the opinion of the Supreme Court, its retroactive application would not be feasible or would work injustice, in which case the procedure under which the cases were filed shall govern.

³⁹ SECTION 2. Repealing Clause. — The Code of Professional Responsibility of 1988, Sections 20 to 37 of Rule 138 and Rule 139-B of the Rules of Court are repealed.
The Lawyer's Oath, as found in Rule 138 of the Rules of Court, is amended and superseded.
Any resolution, circular, bar matter, or administrative order issued by or principles established in the decisions of the Supreme Court inconsistent with the CPRA are deemed modified or repealed.

misleading conduct related to a matter being handled by said lawyer before such court, tribunal, or other government agency.

CANON III
Fidelity

Fidelity pertains to a lawyer's duty to uphold the Constitution and the laws of the land, to assist in the administration of justice as an officer of the court, and to advance or defend a client's cause, with full devotion, genuine interest, and zeal in the pursuit of truth and justice.

SECTION 2. The Responsible and Accountable Lawyer. — A lawyer shall uphold the constitution, obey the laws of the land, promote respect for laws and legal processes, safeguard human rights, and at all times advance the honor and integrity of the legal profession.

As an officer of the court, a lawyer shall uphold the rule of law and conscientiously assist in the speedy and efficient administration of justice.

X X X.

Likewise, respondent's act constitutes a violation of the revised lawyer's oath which provides that a lawyer shall do no falsehood nor shall pervert the law to unjustly favor nor prejudice anyone.

In *Pancrudo v. Cajes, Jr.*,⁴⁰ citing *Office of the Ombudsman v. Espina*,⁴¹ this Court had the occasion to expound on the concept of dishonesty, viz:

[D]ishonesty, which is defined as the 'disposition to lie, cheat, deceive, or defraud; untrustworthiness, lack of integrity,' is classified in three (3) gradations, namely: serious, less serious; and simple. Serious dishonesty comprises dishonest acts: (a) causing serious damage and grave prejudice to the government; (b) directly involving property, accountable forms or money for which respondent is directly accountable and the respondent shows an intent to commit material gain, graft and corruption; (c) exhibiting moral depravity on the part of the respondent; (d) involving a Civil Service examination, irregularity or fake Civil Service eligibility such as, but not limited to, impersonation, cheating and use of crib sheets; (e) committed several times or in various occasions; (f) committed with grave abuse of authority; (g) committed with fraud and/or falsification of official documents relating to respondent's employment; and (h) other analogous circumstances. A dishonest act without the attendance of any of these circumstances can only be characterized as simple dishonesty. In between the aforesaid two forms of dishonesty is less serious dishonesty which obtains when: (a) the dishonest act caused damage and prejudice to

⁴⁰ A.C. No. 11090, 3 July 2023.

⁴¹ 807 Phil. 529 (2017)

the government which is not so serious as to qualify as serious dishonesty; (b) the respondent did not take advantage of his/her position in committing the dishonest act; and (c) other analogous circumstances.

From the foregoing, We find that respondent's violation constitutes simple dishonesty, a less serious offense under sec. 34,⁴² Canon VI of the CPRA.

Correspondingly, Section 37, Canon VI of the CPRA provides the following sanctions.

a.) x x x.

b) If the respondent is found guilty of a less serious offense, any of the following sanctions, or a combination thereof, shall be imposed:

(1) Suspension from the practice of law for a period within the range of one (1) month to six (6) months, or revocation of notarial commission and disqualification as notary public for less than two (2) years;

(2) A fine within the range of P35,000.00 to P100,000.00.

We thus impose upon respondent the penalty of suspension from the practice of law for a period of six (6) months.

Respondent cannot be held accountable for the infractions charged in the first disbarment complaint

The same notwithstanding, We agree with IBP's dismissal of the first disbarment complaint because of complainant's failure to prove his claim that respondent committed misconduct during the proceedings before the UP Tribunal. The allegation as to respondent's supposed preparation of false affidavits was unsubstantiated. The false affidavits were not submitted in evidence. Further, a reading of the transcript of the proceedings before the tribunal belied complainant's claim that respondent was engaged as Ms.

⁴² SECTION 34. Less Serious Offenses. — Less serious offenses include:

- (a) Simple misconduct, or such misconduct without the manifest elements of corruption, clear intent to violate the law or flagrant disregard of established rules;
- (b) Simple negligence in the performance of duty, or such negligence which does not result in depriving the client of his or her day in court;
- (c) Violation of Supreme Court rules and issuances in relation to Bar Matters and administrative disciplinary proceedings, including willful and deliberate disobedience of the orders of the Supreme Court and the IBP;
- (d) Simple dishonesty; X x x .

Tan's counsel, nor that he cajoled her in giving false testimony. There was also no showing that respondent hid the other members of the fraternity involved in the fatal hazing incident.

***Respondent's counter-complaint
should likewise be resolved***

As mentioned above, respondent's comment to the first disbarment complaint contained counter-charges against complainant. Notably, the comment was filed a month after complainant was dismissed from the service. In his counter-complaint, respondent alleged that the first disbarment complaint was a retaliatory suit, meant to harass him for having acted as complainant's opposing counsel in the latter's own cases. He argued that complainant's baseless allegations, as well as his use of offensive and highly improper language in the first disbarment complaint, are both violative of Rule 8.01 of the CPR, warranting his disbarment.⁴³

The Court resolved to dispense with the filing of the comment by complainant, on its resolution dated 17 October 2016. Thereafter, the case was referred to the IBP for investigation and report and recommendation, but only the disbarment cases against respondent were resolved by the IBP. Thus, this Court deems it proper to refer respondent's counter-complaint anew to the IBP for investigation, report and recommendation, and re-docket the same as a separate administrative matter.

WHEREFORE, respondent Atty. Alvin M. Exconde is found guilty of simple dishonesty for violation of the revised lawyer's oath, Sections 1, 2, 5, 8, 10 and 12 Canon II and Section 2, Canon III of the Code of Professional Responsibility and Accountability. Accordingly, he is hereby **SUSPENDED** from the practice of law for a period of six (6) months, effective immediately upon receipt of this Resolution. He is **STERNLY WARNED** that a repetition of the same or similar acts will be dealt with more severely.

Atty. Alvin M. Exconde is hereby **DIRECTED** to **REPORT** to this Court the date of receipt of this Resolution to enable it to determine when his suspension from the practice of law shall take effect.

Let copies of this Resolution be furnished to: (1) the Office of the Bar Confidant to be appended to respondent's personal record as an attorney; (2) the Integrated Bar of the Philippines for its information and guidance; and

⁴³ *Rollo*, pp. 30-31.

(3) the Office of the Court Administrator for circulation to all courts in the country.

The Letter dated 05 October 2021 of the IBP Commission on Bar Discipline and Notice of Resolution dated 15 December 2019, Report and Recommendation dated 27 May 2019 and Extended Resolution dated 14 September 2020 of the Board of Governors of the Integrated Bar of the Philippines are all **NOTED**.

Meantime, let the counter-complaint of respondent Atty Alvin M. Exconde against complainant Judge Medel Arnaldo B. Belen be re-docketed as a separate administrative case. Thereafter, let the counter-complaint be referred to the IBP for investigation, report and recommendation.

SO ORDERED.” *Hernando, J., on leave.*

By authority of the Court:


MARIA TERESA B. SIBULO
Division Clerk of Court ^{24/2}

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