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WHEREFORE, the Petition is hereby *DENIED* and the assailed Decision AFFIRMED. Costs against petitioners.

SO ORDERED.

Melo, (Chairman), Vitug, Gonzaga-Reyes, and *Sandoval-Gutierrez, JJ.,* concur

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SECOND DIVISION

[A.C. No. 5043. September 19, 2001]

ABEDIN L. OSOP, *complainant, vs.* **ATTY. V. EMMANUEL C. FONTANILLA,** *respondent.*

SYNOPSIS

Civil Case No. 6381 for injunction was filed by herein complainant against Macapado Muslim, Chancellor of the Mindanao State University (MSU) at General Santos City and one Virgilio Ramos for terminating his employment therewith. Herein respondent, solicited from complainant a letter of reconsideration addressed to the Chancellor of MSU to serve as starting point for the negotiation between the parties representing on record that the Chancellor was his classmate and that he could possibly convince the latter to reconsider. However, respondent utilized this letter to support his arguments in his motion to dismiss the case for non-exhaustion of administrative remedies and forum-shopping, among others. Nevertheless, he apologized to complainant and his counsel when he failed to convince the Chancellor to reconsider complainant's termination. The case was dismissed for lack of jurisdiction, and not due to the writing of the letter of reconsideration. Feeling aggrieved, the present complaint for gross misconduct was filed by complainant.

Respondent's employment of a letter against the interest of complainant after respondent had actively solicited the same,

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revealed his lack of candor and absence of good faith in his dealings with complainant. This constitutes a clear case of misconduct. However, charges meriting disciplinary action against a member of the Bar generally involve the motives that induced him to commit the act or acts and to justify disbarment or suspension, the case must be clear and free from doubt, not only to the act charged but also as to his motive. There is nothing in the record in the case at bar to clearly show the motivation of respondent nor any record in the past of any misconduct attributed to him. His misconduct was even mitigated when he apologized to the complainant and his counsel. In the absence of a material damage caused to the complainant respondent was reprimanded and warned that any repetition of the same or similar infractions would be dealt with more severely.

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; MISCONDUCT; DEFINED.**— Misconduct, as defined in the case of *Surigao del Norte Electric Cooperative vs. NLRC*, is improper or wrong conduct. It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and *implies wrongful intent* and not mere error in judgment (italics supplied).

2. **ID.; ID.; ID.; CASE AT BAR.** — The act of Atty. Fontanilla in rushing to court and filing the Manifestation the minute he got the Indorsement brings out in the open his not being totally bent on the idea of negotiation even if he was the one who broached the idea and his desire to have the case dismissed at the expense of Mr. Osop. Furthermore, since it is the University President who would decide on complainant's letter, it would have been prudent of Atty. Fontanilla to preserve the *status quo* and wait for the resolution on the said letter. It is deplorable that the letter written by Mr. Osop in good faith and upon the solicitation of respondent was used against him as ammunition to have his case dismissed. And that this unconscionable act was done by a member of the Philippine Bar. Atty. Fontanilla's employment of the said letter against the interest of Mr. Osop, after he had actively solicited the same, was not proper and revealed his lack of candor and absence of good faith in his dealings with Mr. Osop.

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3. **REMEDIAL LAW; ACTIONS; FORUM-SHOPPING; WHEN IT EXISTS.** — Forum-shopping exists when the petitioner files multiple petitions or complaints involving the same issues in two or more tribunals or agencies.

4. **LEGAL ETHICS; ATTORNEYS; MISCONDUCT MITIGATED BY APOLOGY; CASE AT BAR.** — While we find that there is a clear case of misconduct, as Atty. Fontanilla has not been candid and fair in his dealings with the complainant, the penalties of either suspension or disbarment are too harsh to be imposed upon him. It has been said that charges meriting disciplinary action against a member of the Bar generally involve the motives that induced him to commit the act or acts charged and that, to justify disbarment or suspension, the case against him must be clear and free from doubt, not only as to the act charged but as to his motive. As punishment by disbarment or suspension will deeply affect a lawyer's professional life, neither should be imposed unless (the) case against him is free from doubt not only as to the acts charged but as to his motive. There is nothing in the record to clearly show the motivation which induced Atty. Fontanilla to do what he did. The actuation of Atty. Fontanilla, although improper, was mitigated when he apologized to Mr. Osop and Atty. Alconera in open court and by the absence of material damage caused to the complainant. Moreover, the IBP Commission on Bar Discipline finds that there is no evidence on record of past misconduct attributed to herein respondent. *WHEREFORE, IN VIEW OF THE FOREGOING,* respondent Atty. V. Emmanuel C. Fontanilla is hereby *REPRIMANDED.* He is further *WARNED* that any repetition of the same or similar infractions would be dealt with more severely.

DECISION

BUENA, *J.*:

In a verified complaint filed on April 15, 1999, complainant Abedin Limpao Osop charged Atty. V. Emmanuel C. Fontanilla with Grave Misconduct in connection with Civil Case No. 6381 entitled, *"Abedin Limpao Osop vs. Macapado Muslim and Virgilio Ramos"* for Injunction with Prayer for Writ of Preliminary Injunction/Temporary Restraining Order, Damages and Attorney's Fees with the Regional Trial Court at General Santos City, Branch 22.

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On July 24, 1998, the respondent, Atty. Fontanilla, suggested that Abedin Limpao Osop write a letter of reconsideration to Macapado Muslim, Chancellor of the Mindanao State University at General Santos City, one of the defendants in the case. Atty. Fontanilla represented on record that Mr. Muslim was his classmate/contemporary at MSU and that he could possibly convince the latter to reconsider.

During the hearing held on July 27, 1998, Atty. Fontanilla once again urged Mr. Osop to write the letter of reconsideration so that the negotiations could begin. At first Atty. Virgilio Alconera (counsel for the complainant) opposed the suggestion but eventually gave in by saying that if the court would direct his client to write a letter, he (Mr. Osop) would do so. On this basis, the court issued an order suggesting that Mr. Osop write the chancellor a letter of reconsideration without prejudice to the continuation of the hearing on the petition for a temporary restraining order should the latter be not receptive to the request. Based on the order of the court, and upon advise of his counsel, Mr. Osop wrote the letter of reconsideration on the same day. He furnished a copy to Atty. Fontanilla on even date and to the office of the chancellor the following day, July 28, 1998.

On July 30, 1998, Atty. Fontanilla filed a Manifestation praying for the dismissal of the case without prejudice in view of the Indorsement by defendant Macapado Muslim of Mr. Osop's letter to the University President for appropriate disposition, and in conjunction with the doctrine of exhaustion of administrative remedy.

The following day, Atty. Fontanilla manifested in court that he was not able to convince Mr. Muslim to agree to a settlement and apologized to the complainant and his counsel.

On August 6, 1998, respondent Atty. Fontanilla filed a motion to dismiss the civil case on the grounds of, among others, non-exhaustion of administrative remedies and forum-shopping on account of the letter of reconsideration written and filed by Mr. Osop.

Abedin Limpao Osop claimed, among other things, that in filing the "Manifestation" and "Motion to Dismiss," Atty.

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Fontanilla had breached the trust and faith that he and his counsel have reposed in the latter; that the act of Atty. Fontanilla in soliciting the letter of reconsideration and using the same letter against him was a betrayal of trust; that it was Atty. Fontanilla who caused the creation of the administrative forum by soliciting the letter of reconsideration; that Atty. Fontanilla had committed a gross malpractice of law that constituted the administrative offense of grave misconduct.

In response, Atty. V. Emmanuel C. Fontanilla admitted that he made the suggestion to Mr. Osop and his counsel in good faith and in order for the parties to settle their dispute amicably; and that Mr. Osop was ably represented by counsel at the time the suggestion to write the letter of reconsideration was made. He denied misleading or misinforming the court or deceiving Mr. Osop and Atty. Alconera when he filed the manifestation and the motion to dismiss; that he raised the issue of exhaustion of administrative remedies even before the court approved his suggestion of a letter of reconsideration; and that he was merely complying with his duties as an officer of the court by bringing to the court's attention the fact that the issues raised by the complainant were being treated in two separate *fora*. He emphasized that the complainant suffered no damage because the case was dismissed for lack of jurisdiction and not due to the writing of the letter of reconsideration.

The main issue to be resolved is whether or not Atty. Fontanilla committed misconduct as a member of the bar when he solicited the said letter of reconsideration and later on using it to support his arguments for the dismissal of the civil case.

We find that Atty. V. Emmanuel C. Fontanilla is guilty of misconduct.

Misconduct, as defined in the case of *Surigao del Norte Electric Cooperative vs. NLRC*,[1] is improper or wrong conduct. It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character,

[1] 309 SCRA 233 [1999].

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and *implies wrongful intent* and not mere error in judgment (italics supplied).

We can not find fault with Atty. Fontanilla's desire to have the case amicably settled. To this end he made the suggestion that Mr. Osop write the letter of reconsideration to serve as the starting point for the negotiation.

In open court, Atty. Fontanilla intimated that Chancellor Muslim had the power to reconsider the termination of Mr. Osop's services in MSU General Santos City and made it clear that he could probably convince the chancellor to reconsider his decision if a letter of reconsideration is written.

The Indorsement made by Chancellor Muslim to the University President indubitably showed that it is the latter who is the proper authority to resolve the letter of reconsideration.

The act of Atty. Fontanilla in rushing to court and filing the Manifestation the minute he got the Indorsement brings out in the open his not being totally bent on the idea of negotiation even if he was the one who broached the idea and his desire to have the case dismissed at the expense of Mr. Osop. Furthermore, since it is the University President who would decide on complainant's letter, it would have been prudent of Atty. Fontanilla to preserve the *status quo* and wait for the resolution on the said letter.

It is deplorable that the letter written by Mr. Osop in good faith and upon the solicitation of respondent was used against him as ammunition to have his case dismissed. And that this unconscionable act was done by a member of the Philippine Bar.

Atty. Fontanilla's employment of the said letter against the interest of Mr. Osop, after he had actively solicited the same, was not proper and revealed his lack of candor and absence of good faith in his dealings with Mr. Osop.

Moreover, Atty. Fontanilla conveniently omitted to state in his motion to dismiss that the letter of reconsideration was written at his solicitation to facilitate a possible settlement. The said omission is not only unfair to Mr. Osop but had a tendency to

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mislead the court as to the true circumstances material to resolving the incident.

Forum-shopping exists when the petitioner files multiple petitions or complaints involving the same issues in two or more tribunals or agencies.[2]

It is highly unfair of Atty. Fontanilla to accuse Mr. Osop of forum-shopping solely on the basis of the letter of reconsideration, as complainant did not file multiple petitions or complaints involving the same issues in two or more tribunals or agencies. In the case at bar, Mr. Osop had only harbored the idea of seeking relief before the courts. Hence, the filing of Civil Case No. 6381.

Even if the case was dismissed due to lack of jurisdiction, it does not excuse Atty. Fontanilla's actuation of imputing forum-shopping and non-exhaustion of administrative remedies when the same are baseless.

While we find that there is a clear case of misconduct, as Atty. Fontanilla has not been candid and fair in his dealings with the complainant, the penalties of either suspension or disbarment are too harsh to be imposed upon him.

It has been said that charges meriting disciplinary action against a member of the Bar generally involve the motives that induced him to commit the act or acts charged and that, to justify disbarment or suspension, the case against him must be clear and free from doubt, not only as to the act charged but as to his motive. As punishment by disbarment or suspension will deeply affect a lawyer's professional life, neither should be imposed unless (the) case against him is free from doubt not only as to the acts charged but as to his motive.[3] There is nothing in the record to clearly show the motivation which induced Atty. Fontanilla to do what he did.

The actuation of Atty. Fontanilla, although improper, was mitigated when he apologized to Mr. Osop and Atty. Alconera in open court and by the absence of material damage caused to

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[2] *Domingo, Jr. vs. Commission on Elections*, 313 SCRA 311 [1999].

[3] *Toquib vs. Tomol, Jr.*, 32 SCRA 167 [1970].

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the complainant. Moreover, the IBP Commission on Bar Discipline finds that there is no evidence on record of past misconduct attributed to herein respondent.

WHEREFORE, IN VIEW OF THE FOREGOING, respondent Atty. V. Emmanuel C. Fontanilla is hereby *REPRIMANDED.* He is further *WARNED* that any repetition of the same or similar infractions would be dealt with more severely. Let this judgment be entered in respondent's personal record as a member of the Bar.

SO ORDERED.

Bellosillo (Chairman), Mendoza, Quisumbing, and *De Leon, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 135936. September 19, 2001]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GUALBERTO MIRADOR *alias* "GOLING", JOHN DOE (at large), PETER DOE (at large),** *accused.* **GUALBERTO MIRADOR, *alias* "GOLING",** *accused-appellant.*

SYNOPSIS

For killing Rodrigo Nacario with the help of two co-accused who are at large, appellant was convicted of murder by treachery. Hence, this appeal.

Carmelita, the wife of the Rodrigo, testified that they were sleeping at the time when awakened by dog barks presumably caused by three persons crawling toward their house. Rodrigo went out to ask help from his parents but was seized by three