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[A.C. No. 5859. November 23, 2010]
(Formerly CBD Case No. 421)

ATTY. CARMEN LEONOR M. ALCANTARA, VICENTE P. MERCADO, SEVERINO P. MERCADO and SPOUSES JESUS AND ROSARIO MERCADO, *complainants, vs.* **ATTY. EDUARDO C. DE VERA,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; MEMBERSHIP IN THE BAR IS A PRIVILEGE BURDENED WITH CONDITIONS; AN ATTORNEY MAY BE DISBARRED OR SUSPENDED FOR ANY VIOLATION OF HIS OATH OR OF HIS DUTIES AS AN ATTORNEY AND COUNSELOR, WHICH INCLUDE STATUTORY GROUNDS ENUMERATED IN SECTION 27, RULE 138 OF THE RULES OF COURT.— It is worth stressing that the practice of law is not a right but a privilege bestowed by the State upon those who show that they possess, and continue to possess, the qualifications required by law for the conferment of such privilege. Membership in the bar is a privilege burdened with conditions. A lawyer has the privilege and right to practice law only during good behavior and can only be deprived of it for misconduct ascertained and declared by judgment of the court after opportunity to be heard has been afforded him. Without invading any constitutional privilege or right, an attorney's right to practice law may be resolved by a proceeding to suspend or disbar him, based on conduct rendering him unfit to hold a license or to exercise the duties and responsibilities of an attorney. It must be understood that the purpose of suspending or disbarring an attorney is to remove from the profession a person whose misconduct has proved him unfit to be entrusted with the duties and responsibilities belonging to an office of an attorney, and thus to protect the public and those charged with the administration of justice, rather than to punish the attorney. In *Maligsa v. Cabanting*, we explained that the bar should maintain a high standard of legal proficiency as well as of

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honesty and fair dealing. A lawyer brings honor to the legal profession by faithfully performing his duties to society, to the bar, to the courts and to his clients. To this end a member of the legal profession should refrain from doing any act which might lessen in any degree the confidence and trust reposed by the public in the fidelity, honesty and integrity of the legal profession. An attorney may be disbarred or suspended for any violation of his oath or of his duties as an attorney and counselor, which include statutory grounds enumerated in Section 27, Rule 138 of the Rules of Court.

2. ID.; ID.; RESPONDENT LAWYER COMMITTED PROFESSIONAL MALPRACTICE AND GROSS MISCONDUCT.— In the present case, the respondent committed professional malpractice and gross misconduct particularly in his acts against his former clients after the issuance of the IBP Resolution suspending him from the practice of law for one year. In summary, the respondent filed against his former client, her family members, the family corporation of his former client, the Chairman and members of the Board of Governors of the IBP who issued the said Resolution, the Regional Trial Court Judge in the case where his former client received a favorable judgment, and the present counsel of his former client, a total of twelve (12) different cases in various fora which included the Securities and Exchange Commission; the Provincial Prosecutors Office of Tagum, Davao; the Davao City Prosecutors Office; the IBP-Commission on Bar Discipline; the Department of Agrarian Reform; and the Supreme Court. In addition to the twelve (12) cases filed, the respondent also re-filed cases which had previously been dismissed. The respondent filed six criminal cases against members of the Mercado family separately docketed as I.S. Nos. 97-135; 97-136; 97-137; 97-138; 97-139; and 97-140. With the exception of I.S. No. 97-139, all the aforementioned cases are re-filing of previously dismissed cases.

3. ID.; ID.; RESPONDENT'S ACT OF FILING A BARRAGE OF CASES APPEARS TO BE AN ACT OF REVENGE AND HATE DRIVEN BY ANGER AND FRUSTRATION AGAINST HIS FORMER CLIENT WHO FILED THE DISCIPLINARY COMPLAINT AGAINST HIM FOR INFIDELITY IN THE CUSTODY OF A CLIENT'S FUNDS WHERE HE WAS METED A PENALTY OF ONE YEAR SUSPENSION FROM THE PRACTICE OF LAW.— Now,

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there is nothing ethically remiss in a lawyer who files numerous cases in different fora, as long as he does so in good faith, in accordance with the Rules, and without any ill-motive or purpose other than to achieve justice and fairness. In the present case, however, we find that the barrage of cases filed by the respondent against his former client and others close to her was meant to overwhelm said client and to show her that the respondent does not fold easily after he was meted a penalty of one year suspension from the practice of law. The nature of the cases filed by the respondent, the fact of re-filing them after being dismissed, the timing of the filing of cases, the fact that the respondent was in conspiracy with a renegade member of the complainants' family, the defendants named in the cases and the foul language used in the pleadings and motions all indicate that the respondent was acting beyond the desire for justice and fairness. His act of filing a barrage of cases appears to be an act of revenge and hate driven by anger and frustration against his former client who filed the disciplinary complaint against him for infidelity in the custody of a client's funds.

4. ID.; ID.; RESPONDENT NOT ONLY FILED FRIVOLOUS AND UNFOUNDED LAWSUITS THAT VIOLATED HIS DUTIES AS AN OFFICER OF THE COURT IN AIDING IN THE PROPER ADMINISTRATION OF JUSTICE, BUT HE DID SO AGAINST A FORMER CLIENT TO WHOM HE OWES LOYALTY AND FIDELITY; SUCH ACT IS AN INDIRECT VIOLATION OF THE CANONS AND WILL NOT BE TOLERATED BY THE COURT.— The respondent not only filed frivolous and unfounded lawsuits that violated his duties as an officer of the court in aiding in the proper administration of justice, but he did so against a former client to whom he owes loyalty and fidelity. Canon 21 and Rule 21.02 of the Code of Professional Responsibility provides: CANON 21 — A lawyer shall preserve the confidence and secrets of his client even after the attorney-client relation is terminated. Rule 21.02 – A lawyer shall not, to the disadvantage of his client, use information acquired in the course of employment, nor shall he use the same to his own advantage or that of a third person, unless the client with full knowledge of the circumstances consents thereto. The cases filed by the respondent against his former client involved matters and information acquired by the respondent during the time when he was still Rosario's counsel. Information as to the

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> structure and operations of the family corporation, private documents, and other pertinent facts and figures used as basis or in support of the cases filed by the respondent in pursuit of his malicious motives were all acquired through the attorney-client relationship with herein complainants. Such act is in direct violation of the Canons and will not be tolerated by the Court.

APPEARANCES OF COUNSEL

Alcantara & Alcantara Law Office and *Ricafrente San Vicente & Cacho Law Firm* for complainants.

Romulo Mabanta Buenaventura Sayoc & De los Angeles for respondent.

R E S O L U T I O N

PER CURIAM:

For our review is the Resolution[1] of the Board of Governors of the Integrated Bar of the Philippines (IBP) finding respondent Atty. Eduardo C. De Vera liable for professional malpractice and gross misconduct and recommending his disbarment.

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[1] *Rollo*, p. 254. In its Resolution No. XV-2002-391, the IBP Board of Governors resolved as follows:

> … to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution/Decision as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering that the Commission finds convincing, indeed compelling evidence to sustain the indictment against Atty. Eduardo C. De Vera for professional malpractice and gross misconduct consisting of barratry, abuse of judicial proceedings and processes, exploiting a family's personal problem for vengeful and illegal purposes and employing unprofessional, intemperate and abusive language, Respondent is hereby **DISBARRED** from the practice of law. The counter-petition against Atty. Carmen Leonor M. Alcantara is **DISMISSED** for lack of merit.

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The facts, as appreciated by the investigating commissioner,[2] are undisputed.

The respondent is a member of the Bar and was the former counsel of Rosario P. Mercado in a civil case filed in 1984 with the Regional Trial Court of Davao City and an administrative case filed before the Securities and Exchange Commission, Davao City Extension Office.[3]

Pursuant to a favorable decision, a writ of execution pending appeal was issued in favor of Rosario P. Mercado. Herein respondent, as her legal counsel, garnished the bank deposits of the defendant, but did not turn over the proceeds to Rosario. Rosario demanded that the respondent turn over the proceeds of the garnishment, but the latter refused claiming that he had paid part of the money to the judge while the balance was his, as attorney's fees. Such refusal prompted Rosario to file an administrative case for disbarment against the respondent.[4]

On March 23, 1993, the IBP Board of Governors promulgated a Resolution holding the respondent guilty of infidelity in the custody and handling of client's funds and recommending to the Court his one-year suspension from the practice of law.[5]

Following the release of the aforesaid IBP Resolution, the respondent filed a series of lawsuits against the Mercado family except George Mercado. The respondent also instituted cases against the family corporation, the corporation's accountant and the judge who ruled against the reopening of the case where respondent tried to collect the balance of his alleged fee from Rosario. Later on, the respondent also filed cases against the chairman and members of the IBP Board of Governors who voted to recommend his suspension from the practice of law

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[2] Commissioner Renato G. Cunanan, Report dated November 23, 2001, *rollo,* pp. 256-281.

[3] *Rollo,* p. 264.

[4] *Id.* at 265.

[5] *Id.*

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for one year. Complainants allege that the respondent committed barratry, forum shopping, exploitation of family problems, and use of intemperate language when he filed several frivolous and unwarranted lawsuits against the complainants and their family members, their lawyers, and the family corporation.[6] They maintain that the primary purpose of the cases is to harass and to exact revenge for the one-year suspension from the practice of law meted out by the IBP against the respondent. Thus, they pray that the respondent be disbarred for malpractice and gross misconduct under Section 27,[7] Rule 138 of the Rules of Court.

In his defense the respondent basically offers a denial of the charges against him.

He denies he has committed barratry by instigating or stirring up George Mercado to file lawsuits against the complainants. He insists that the lawsuits that he and George filed against the complainants were not harassment suits but were in fact filed in good faith and were based on strong facts.[8]

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[6] *Rollo,* pp. 265-266.

[7] SEC. 27. *Disbarment or suspension of attorneys by Supreme Court, grounds therefor.* – A member of the bar may be disbarred or suspended from his 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 conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a wilful disobedience 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.

The disbarment or suspension of a member of the Philippine Bar by a competent court or other disciplinatory agency in a foreign jurisdiction where he has also been admitted as an attorney is a ground for his disbarment or suspension if the basis of such action includes any of the acts hereinabove enumerated.

The judgment, resolution or order of the foreign court or disciplinary agency shall be *prima facie* evidence of the ground for disbarment or suspension.

[8] *Rollo,* p. 267.

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Also, the respondent denies that he has engaged in forum shopping. He argues that he was merely exhausting the remedies allowed by law and that he was merely constrained to seek relief elsewhere by reason of the denial of the trial court to reopen the civil case so he could justify his attorney's fees.

Further, he denies that he had exploited the problems of his client's family. He argues that the case that he and George Mercado filed against the complainants arose from their perception of unlawful transgressions committed by the latter for which they must be held accountable for the public interest.

Finally, the respondent denies using any intemperate, vulgar, or unprofessional language. On the contrary, he asserts that it was the complainants who resorted to intemperate and vulgar language in accusing him of "extorting from Rosario shocking and unconscionable attorney's fees."[9]

After careful consideration of the records of this case and the parties' submissions, we find ourselves in agreement with the findings and recommendation of the IBP Board of Governors.

It is worth stressing that the practice of law is not a right but a privilege bestowed by the State upon those who show that they possess, and continue to possess, the qualifications required by law for the conferment of such privilege.[10] Membership in the bar is a privilege burdened with conditions. A lawyer has the privilege and right to practice law only during good behavior and can only be deprived of it for misconduct ascertained and declared by judgment of the court after opportunity to be heard

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[9] *Id.* at 267-268.

[10] *Mecaral v. Velasquez,* A.C. No. 8392 (Formerly CBD Case No. 08-2175), June 29, 2010, p. 4, citing *Mendoza v. Deciembre,* A.C. No. 5338, February 23, 2009, 580 SCRA 26, 36; *Yap-Paras v. Paras*, A.C. No. 4947, February 14, 2005, 451 SCRA 194, 202.

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has been afforded him. Without invading any constitutional privilege or right, an attorney's right to practice law may be resolved by a proceeding to suspend or disbar him, based on conduct rendering him unfit to hold a license or to exercise the duties and responsibilities of an attorney. It must be understood that the purpose of suspending or disbarring an attorney is to remove from the profession a person whose misconduct has proved him unfit to be entrusted with the duties and responsibilities belonging to an office of an attorney, and thus to protect the public and those charged with the administration of justice, rather than to punish the attorney.[11] In *Maligsa v. Cabanting*,[12] we explained that the bar should maintain a high standard of legal proficiency as well as of honesty and fair dealing. A lawyer brings honor to the legal profession by faithfully performing his duties to society, to the bar, to the courts and to his clients. To this end a member of the legal profession should refrain from doing any act which might lessen in any degree the confidence and trust reposed by the public in the fidelity, honesty and integrity of the legal profession. An attorney may be disbarred or suspended for any violation of his oath or of his duties as an attorney and counselor, which include statutory grounds enumerated in Section 27, Rule 138 of the Rules of Court.

In the present case, the respondent committed professional malpractice and gross misconduct particularly in his acts against his former clients after the issuance of the IBP Resolution suspending him from the practice of law for one year. In summary, the respondent filed against his former client, her family members, the family corporation of his former client, the Chairman and members of the Board of Governors of the IBP who issued the said Resolution, the Regional Trial Court Judge in the case where his former client received a favorable judgment, and the present counsel of his former client, a total of twelve (12) different cases in various fora which included

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[11] *Marcelo v. Javier, Sr.*, A.C. No. 3248, September 18, 1992, 214 SCRA 1, 13.

[12] A.C. No. 4539, May 14, 1997, 272 SCRA 408, 413.

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the Securities and Exchange Commission; the Provincial Prosecutors Office of Tagum, Davao; the Davao City Prosecutors Office; the IBP-Commission on Bar Discipline; the Department of Agrarian Reform; and the Supreme Court.[13]

In addition to the twelve (12) cases filed, the respondent also re-filed cases which had previously been dismissed. The respondent filed six criminal cases against members of the Mercado family separately docketed as I.S. Nos. 97-135; 97-136; 97-137; 97-138; 97-139; and 97-140. With the exception of I.S. No. 97-139, all the aforementioned cases are re-filing of previously dismissed cases.[14]

Now, there is nothing ethically remiss in a lawyer who files numerous cases in different fora, as long as he does so in good faith, in accordance with the Rules, and without any ill-motive or purpose other than to achieve justice and fairness. In the present case, however, we find that the barrage of cases filed by the respondent against his former client and others close to her was meant to overwhelm said client and to show her that the respondent does not fold easily after he was meted a penalty of one year suspension from the practice of law.

The nature of the cases filed by the respondent, the fact of re-filing them after being dismissed, the timing of the filing of cases, the fact that the respondent was in conspiracy with a renegade member of the complainants' family, the defendants named in the cases and the foul language used in the pleadings and motions[15] all indicate that the respondent was acting beyond the desire for justice and fairness. His act of filing a barrage of cases appears to be an act of revenge and hate driven by anger and frustration against his former client who filed the disciplinary complaint against him for infidelity in the custody of a client's funds.

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[13] *Rollo*, pp. 270-273.

[14] *Id.* at 273-274.

[15] *Id.* at 278-280.

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In the case of *Prieto v. Corpuz*,[16] the Court pronounced that it is professionally irresponsible for a lawyer to file frivolous lawsuits. Thus, we stated in *Prieto*,

> Atty. Marcos V. Prieto must be sanctioned for filing this unfounded complaint. Although no person should be penalized for the exercise of the right to litigate, however, this right must be exercised in good faith.[17]
>
> As officers of the court, lawyers have a responsibility to assist in the proper administration of justice. They do not discharge this duty by filing frivolous petitions that only add to the workload of the judiciary.
>
> A lawyer is part of the machinery in the administration of justice. Like the court itself, he is an instrument to advance its ends – the speedy, efficient, impartial, correct and inexpensive adjudication of cases and the prompt satisfaction of final judgments. A lawyer should not only help attain these objectives but should likewise avoid any unethical or improper practices that impede, obstruct or prevent their realization, charged as he is with the primary task of assisting in the speedy and efficient administration of justice.[18] Canon 12 of the Code of Professional Responsibility promulgated on 21 June 1988 is very explicit that lawyers must exert every effort and consider it their duty to assist in the speedy and efficient administration of justice.

Further, the respondent not only filed frivolous and unfounded lawsuits that violated his duties as an officer of the court in aiding in the proper administration of justice, but he did so against a former client to whom he owes loyalty and fidelity. Canon 21 and Rule 21.02 of the Code of Professional Responsibility[19] provides:

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[16] A.C. No. 6517, December 6, 2006, 510 SCRA 1, 11-12.

[17] *Duduaco v. Laquindanum*, A.M. No. MTJ-05-1601 (OCA-I.P.I No. 02-1213-MTJ), August 11, 2005, 466 SCRA 428, 435.

[18] Citing Agpalo, *COMMENTS ON THE CODE OF PROFESSIONAL RESPONSIBILITY AND THE CODE OF JUDICIAL CONDUCT*, p. 117 (2004 Ed.).

[19] Promulgated by the Supreme Court on June 21, 1988.

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CANON 21 — A lawyer shall preserve the confidence and secrets of his client even after the attorney-client relation is terminated.

Rule 21.02 – A lawyer shall not, to the disadvantage of his client, use information acquired in the course of employment, nor shall he use the same to his own advantage or that of a third person, unless the client with full knowledge of the circumstances consents thereto.

The cases filed by the respondent against his former client involved matters and information acquired by the respondent during the time when he was still Rosario's counsel. Information as to the structure and operations of the family corporation, private documents, and other pertinent facts and figures used as basis or in support of the cases filed by the respondent in pursuit of his malicious motives were all acquired through the attorney-client relationship with herein complainants. Such act is in direct violation of the Canons and will not be tolerated by the Court.

WHEREFORE, respondent Atty. Eduardo C. De Vera is hereby *DISBARRED* from the practice of law effective immediately upon his receipt of this Resolution.

Let copies of this Resolution be furnished the Bar Confidant to be spread on the records of the respondent; the Integrated Bar of the Philippines for distribution to all its chapters; and the Office of the Court Administrator for dissemination to all courts throughout the country.

SO ORDERED.

Corona, C.J., Carpio, Carpio Morales, Velasco, Jr., Nachura, Leonardo-de Castro, Brion, Peralta, Bersamin, Abad, Villarama, Jr., Perez, Mendoza, and *Sereno, JJ.,* concur.

Del Castillo, J., on official leave.