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SECOND DIVISION

[A.C. No. 1777. September 27, 1977]

CARLOS V. EUSEBIO, *complainant, vs.* **NICEFORO S. AGATON,** *respondent.*

SYLLABUS

LEGAL AND JUDICIAL ETHICS; ATTORNEYS; DISBARMENT; *STATEMENT COMPLAINED OF IS NOT CONTEMPTIBLE AS TO CONSIDER THE AUTHOR THEREOF GUILTY OF GRAVE MISCONDUCT.*— The complaint for disbarment cannot be given due course. The statement complained of is relevant and material to the points at issue and the respondent acted without malice in filing the same. Besides, the said statement, taken in the light of the responsive pleading in its entirety, is not contemptible as to consider the author thereof guilty of grave misconduct.

RESOLUTION

CONCEPCION JR., *J.*:

In a sworn letter addressed to the Chief Justice, dated June 15, 1977, Carlos V. Eusebio seeks the disbarment of the attorney for his adversary in Sp. Proc. No. QE-00807 of the Juvenile and Domestic Relations Court of Quezon City, entitled: "*Carlos V. Eusebio, petitioner, versus Mercedes B. Eusebio, etc., respondent,*" upon the ground of gross misconduct for having made the following statement in the Answer:

"3. Petitioner does not possess a balanced mentality and temperament as to be fit to continue with the care, custody, and control of the aforementioned minor children. Indeed, he has arbitrarily and tyranically ordered his children to stop schooling x x x,"

which statement is allegedly neither dignified nor in keeping with the dignity of the legal profession, and in utter violation and disregard of his duty, as a member of the Bar, to abstain from all offensive personality and to advance no fact prejudicial

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to the honor or reputation of a party or witnesses, unless required by the justice of the cause with which he is charged.

It is also claimed that the respondent violated his oath as attorney, more particularly that portion wherein he swore to do no falsehood, nor consent to the doing of any in court and to act with good fidelity to the courts, for having made his client verify said Answer, knowing or having sufficient reason to believe that the aforequoted statement is false, thereby consenting to the doing of falsehood in court.

The complainant further claims that by making the aforestated defamatory statement, the respondent has clearly established his bad character and unfitness to remain as lawyer and has brought reproach upon the legal profession, failing as he did, to meet the highest degree of morality and integrity expected of members of the Bar.

The respondent, Atty. Niceforo S. Agaton, was required to answer, and he replied that the statements complained of are, indeed, contained in the Answer he filed in behalf of the respondent, Mercedes B. Eusebio in Sp. Proc. No. 00807 of the Juvenile and Domestic Relations Court of Quezon City, but he denied that he intended to damage or discredit the complainant. He claims that the pleading, although denominated as "Answer", is also a counter-petition for *habeas corpus* where the complainant's wife is seeking the custody of her minor children, Seth and Jude Eusebio, for which reason, the respondent contends that "(h)e was merely discharging his duties to his client, with a justifiable motive of alleging grounds to show the unfitness of the complainant to take care of the children," and that "(t)he allegations made were intended to show that the complainant had an unstable disposition." The respondent further contends that the allegations complained of are privileged communication because it was filed in the course of a judicial proceeding.

The complaint for disbarment cannot be given due course. The statement complained of is relevant and material to the points at issue and the respondent acted without malice in filing the same. Besides, the said statement, taken in the light of the

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responsive pleading in its entirety, is not contemptible as to consider the author thereof guilty of grave misconduct.

WHEREFORE, the complaint for the disbarment of the respondent is hereby dismissed for lack of merit.

SO ORDERED.

Antonio and *Santos, JJ.*, concur.

Fernando (Chairman), J., concurs in the main opinion and the observation of Justice Barredo in his concurrence.

Aquino, J., concurs in the result.

Barredo, J., concurs. Respondent's choice of words in bad, but I feel the language used against complainant is not necessarily insulting, considering the circumstances explained in the answer.

SECOND DIVISION

[G.R. No. L-30096. September 27, 1977]

CONRADO SINGSON, *plaintiff*, *vs.* **DAVID BABIDA, RAMON ANTONIO, JAIME PERALTA, FELINO GARCIA, JOSE MARCOS, RICARDO RABAGO, JAIME BIBIS, FELICIANO TUGADE, BONIFACIO CALPITO, ALFREDO PERALTA, ALFREDO GARCIA and FELICIANO GARCIA,** *defendants.* **MATIAS BABIDA, VICTOR GARCIA, JULIAN PACURSA, NICOLAS AGATEP, DOROTEO BALLESTEROS and PEDRO AGATEP,** *bondsmen and petitioners-appellants, vs.* **CONRADO SINGSON and NEMESIO T. OÑATE,** *respondents-appellees.*