



Leo Lumbre (Leo) to the Committee on Bar and Discipline of the IBP (CBD-IBP),<sup>1</sup> the pertinent portion of which reads:

On 24 May 2007 at around 9:00 o'clock in the morning, while the undersigned was away from his residence, Atty. Erwin Belleza together with Barangay Kagawad Teofilo Balosca, civilian Baloy Paña and a number of persons, came and with the help of his two companions, destroyed the nipa hut in the garden of the undersigned with the use of bolo. Then, together again with the same companions, aimed their firearms towards undersigned's children Rufrex Lumbre and Leo John Lumbre, 16 and 13 years old respectively, chased and attempted to kill them, which abuse on the minors caused them fear and affected their normal development.<sup>2</sup>

Attached to Leo's complaint were affidavits, including that executed by Leojohn and Rufrex, his sons, whereby they rendered their following version of the incident, to wit:

x x x x

2. That at around 9:00 o'clock in the morning of May 24, 2007, our parents and my uncle Pablo Lumbre left our residence after being invited by members of the Javier PNP to the Police Station;

3. That at around 10:30 o'clock of the same morning and while our parents were in the Javier PNP station, we saw several persons came (sic) to our farm and that prompted us to verify their purpose in coming;

4. That as we went near to them, we personally saw Atty. Erwin Belleza, Barangay Kagawad Teofilo Balosca and Baloy Paña destroying our nipa hut we constructed for our temporary shelter in our garden. These three persons helped one another using their hands and bolo until the hut was totally destroyed;

5. That we likewise saw that the aforesated persons were carrying firearms. Atty. Belleza has a .45 caliber pistol in his hand, Baloy Paña has an armalite rifle while Teofilo Balosca has firearm we failed to distinguish its name. Balosca and Paña were carrying a bolo tucked on their waist;

6. That when Teofilo Balosca noticed our presence, he instructed his companions to arrest us and same time pointed their guns toward us. He even ordered to kill us;

7. That because of fear we ran back to our house but these Atty. Belleza, Belo Paña and Teofilo Balosca chased us still pointing their guns at us. On our way we met our sister Genevieve Lumbre who also joined to run with us;<sup>3</sup>

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<sup>1</sup> *Rollo*, p. 91.

<sup>2</sup> *Id.* at. 92.

<sup>3</sup> *Id.* at 94.

x x x x

Genevieve Lumbre, the daughter of Leo, also executed an affidavit corroborating the version of Leojohn and Rufrex, and adding that when they reached their house, she saw the respondent checking the surroundings of their house while still holding his gun.<sup>4</sup>

The complainants further submitted the affidavits of Danilo R. Mardoquio and Roland Rodriguez<sup>5</sup> who thereby confirmed that three armed men had chased Leojohn and Rufrex in the morning of May 24, 2007.

On his part, the respondent submitted his answer,<sup>6</sup> whereby he denied going to the farm of the complainants. He thereby insisted that he had not been around the place of the complainants during the incident adverted to by them, as borne out by the sworn statements of Barangay Kagawad Teofilo Balosca and the latter's laborers;<sup>7</sup> that the complaint against him was intended only to impede him from discharging his duties for Teofilo Balosca, his client, and to harass him; and that he would not risk his professional career by doing what the complainants were accusing him of.<sup>8</sup>

### **Report and Recommendation of the IBP**

On November 19, 2013, CBD Commissioner Jose Villanueva Cabrera submitted his Report and Recommendation<sup>9</sup> wherein he opined that the IBP had no jurisdiction over the disbarment complaint, and held thusly:

PREMISES CONSIDERED, for lack of jurisdiction and lack of authority to conduct preliminary investigation against respondent for attempted homicide or attempted murder, as the case may be or for other appropriate offense and for insufficiency of evidence, this administrative case against Atty. Erwin V. Belleza is hereby DISMISSED.

RESPECTFULLY SUBMITTED.<sup>10</sup>

CBD Commissioner Cabrera stated that aside from determining if the respondent had been guilty of gross misconduct, another issue that the complaint had brought forth related to whether or not the IBP had jurisdiction to conduct an inquiry or proceeding to determine if probable

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<sup>4</sup> Id. at 97.

<sup>5</sup> Id. at 100-101.

<sup>6</sup> Id. at 110-113.

<sup>7</sup> Id. at 114-116.

<sup>8</sup> Id. at 112.

<sup>9</sup> Id. at 209-216.

<sup>10</sup> Id. at 216.

cause existed for holding the respondent liable as to be held for trial.<sup>11</sup> He concluded that the administrative complaint should be dismissed because the IBP had no jurisdiction to conduct the preliminary investigation against the respondent.

On August 10, 2014, the IBP Board of Governors issued Resolution No. XXI-2014-526 reversing the recommendation of CBD Commissioner Cabrera and recommended instead that the respondent be held liable for gross misconduct and be punished with suspension from the practice of law for two months.<sup>12</sup> In its extended resolution, the IBP Board of Governors justified the reversal of CBD Commissioner Cabrera's recommendation in this wise:

Respondent clearly violated Rule 1.01 of the Code of Professional Responsibility ("CPR") in relation to the "Special Protection of Children Against Abuse, Exploitation and Discrimination Act" ("RA 7610") when respondent chased and threatened to kill the two complainants who are both minors, the absence of fired shots notwithstanding.

x x x x

Rule 1.01 of the CPR provides that "a lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct." An unlawful conduct is an act or omission which is against the law. RA 7610 particularly Section 10(a), Article VI (Other Acts of Abuse) provides that "any person who shall commit any other acts of child abuse, cruelty or exploitation or to be responsible for other conditions prejudicial to the child's development" shall be criminally liable for "Other Acts of Neglect, Abuse, Cruelty or Exploitation and other Conditions Prejudicial to the Child's Development."

The affidavit dated 07 November 2007 executed by the complainants who are minors categorically stated in paragraphs 4-7 (Records, p. 2) and identified respondent as one of the persons who destroyed their nipa hut and who chased and pointed guns at them. The statement of the minors was also affirmed and corroborated by Ms. Genevieve Lumbré in her affidavit dated 07 November 2007 and by Mr. Danilo Mardoquio in his affidavit dated 19 December 2007. The said affiants saw respondent carrying a .45 caliber pistol with armed companions running after and pointing their guns at the two complainants who are minors. Furthermore, the psychiatric evaluation and mental status examination dated 04 September 2007 of complainant Rufrex conducted by Dr. Lyn Y. Veron MD shows that Rufrex was complaining of impaired sleep and nervousness. Clearly, the effect of the incident on the minors was more psychological and mental rather than physical. Thus, it is neither necessary that shots be fired nor for anybody to get physically hurt or bleed in the incident. Respondent's act of chasing and threatening to kill

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<sup>11</sup> The issue was stated as follows: "1. Whether this Commission has jurisdiction or authority to conduct an inquiry or proceeding to determine whether there is sufficient ground to engender a well-grounded belief that a crime has been committed and that the respondent is probably guilty thereof and should be held for trial;" *rollo*, pp. 210-211.

<sup>12</sup> *Rollo*, p. 207.

the two complainants who are both minors, therefore, is an act of child abuse, cruelty or exploitation under RA 7610.

Hence, respondent is administratively liable.

#### **The Recommendation of the Board**

WHEREFORE, premises considered, the Board resolves to reverse and set aside the Report and Recommendation dated 19 November 2013. Finding respondent guilty of grave misconduct for chasing and threatening to kill two minor respondents (sic) which act amounts to child abuse, respondent Atty. Erwin V. Belleza is hereby SUSPENDED from the practice of law for two (2) months.

SO ORDERED.<sup>13</sup>

#### **Issue**

Was the respondent administratively liable for gross misconduct for chasing and threatening the minors Leojohn and Rufrex with his gun?

#### **Ruling of the Court**

We find and hold that the respondent transgressed ethical norms of conduct as a lawyer, and was thus guilty of gross misconduct. He should be condignly penalized for violating the letter and spirit of the *Code of Professional Responsibility*.

The complainants' version of the incident deserves credence. Their experience as narrated by Leojohn and Rufrex were consistent with and corroborated by the sworn declarations of the other witnesses. Their common narrative was not the product of a design or a concoction on their part. The respondent did not establish any ill motive that could have moved them to declare affirmatively against him about his actions and physical presence during the incident. His insistence that the complainants had accused him of the misconduct only to harass him and to prevent him from serving the interest of his client would not undercut the fact that such motivation – even assuming the same to be true – did not necessarily mean that he had not threatened and run after the minors while wielding his gun. Indeed, they had nothing to gain in so declaring against him except to assert the truth about the incident.

The IBP Board of Governors noted that the psychiatric evaluation and mental status examination conducted by Dr. Lyn Y. Veron, M.D. revealed that Rufrex had complained of impaired sleep and nervousness. It observed

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<sup>13</sup> Id. at 220-221.

that such finding showed the psychological and mental effect of the incident on Rufrex. Thereby, the complainants' account about the respondent's act of chasing and threatening to kill the minors was confirmed, for such finding was produced by the respondent's imputed acts.

In contrast, the respondent merely denied his presence at the scene. But it is notable that he did not even explain where he had been exactly to substantiate his denial of physical presence.

The *Code of Professional Responsibility* pertinently provides:

CANON 1 – A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCESSES.

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

x x x x

CANON 7 – A LAWYER SHALL AT ALL TIMES UPHOLD THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION AND SUPPORT THE ACTIVITIES OF THE INTEGRATED BAR.

Rule 7.03 - A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

We have emphasized in *De Leon v. Atty. Castelo*<sup>14</sup> that the *Code of Professional Responsibility* binds all attorneys to obey the laws of the land and to observe and maintain the rule of law, viz.:

The *Code of Professional Responsibility* echoes the *Lawyer's Oath*,  
x x x x

x x x x

The foregoing ordain ethical norms that bind all attorneys, as officers of the Court, to act with the highest standards of honesty, integrity, and trustworthiness. All attorneys are thereby enjoined to obey the laws of the land, to refrain from doing any falsehood in or out of court or from consenting to the doing of any in court, and to conduct themselves according to the best of their knowledge and discretion with all good fidelity as well to the courts as to their clients. Being also servants of the Law, attorneys are expected to observe and maintain the rule of law and to make themselves exemplars worthy of emulation by others. The least they can do in that regard is to refrain from engaging in any form or manner of

<sup>14</sup> A.C. No. 8620, January 12, 2011, 639 SCRA 237.

unlawful conduct (which broadly includes any act or omission contrary to law, but does not necessarily imply the element of criminality even if it is broad enough to include such element).<sup>15</sup>

Evidently, the respondent ignored his sworn duty to uphold the law and to shy away from any conduct that tended to degrade the law profession. He wittingly turned himself into an instrument of terror against the minors. Not even his claim of merely advocating his client's interest justified his doing so. He ought to know that such advocacy of his client's cause was not boundless and that he had clearly exceeded the bounds of propriety by wielding his gun and running after the minors. His acts evinced a desire to menace them. His acts and actuations, which were in breach of our laws, should not now be ignored, least of all tolerated. He was an attorney who ought to have obeyed the laws. Worse, he allowed himself to commit acts that, in the objective view of the IBP Board of Governors, easily came under the classification of *Other Acts of Neglect, Abuse, Cruelty or Exploitation and other Conditions Prejudicial to the Child's Development* as defined and punished under Section 10 of Republic Act No. 7610.<sup>16</sup>

The respondent's behavior patently transgressed the earlier quoted provisions of the *Code of Professional Responsibility*, and rendered him liable for gross misconduct, defined as "improper or wrong conduct, the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies a wrongful intent and not mere error of judgment."<sup>17</sup> We have been consistent in holding that any gross misconduct by an attorney in a professional or private capacity indicates his unfitness to manage the affairs of others, and is a ground for the imposition of the penalty of suspension or disbarment, because good moral character is an essential qualification for the admission of an attorney and for the continuance of such privilege.<sup>18</sup>

Having determined the respondent to be guilty of gross misconduct, it now behooves us to ascertain if the recommended penalty of suspension from the practice of law for two months was proper and commensurate to the violation.

We find the recommendation deficient in relation to the acts and actuations imputed to the respondent. In *Gonzalez v. Atty. Alcaraz*,<sup>19</sup> we imposed a one-year suspension from the practice of law on the respondent attorney for violating Rule 1.01 of the *Code of Professional Responsibility* because he had wielded his gun and aimlessly fired the same in public. The

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<sup>15</sup> Id. at 243-244.

<sup>16</sup> Entitled *Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act*.

<sup>17</sup> *Whitson v. Atienza*, A.C. No. 5535, August 28, 2003, 410 SCRA 10, 15.

<sup>18</sup> Id.


<sup>19</sup> A.C. No. 5321, September 27, 2006.

same penalty is proper because the respondent endangered the lives and mental health of the minors.

**WHEREFORE**, the Court **FINDS** and **DECLARES** respondent Atty. Erwin V. Belleza **GUILTY** of **GROSS MISCONDUCT** for his violation of Canon 1, Rule 1.01, Canon 7 and Rule 7.03 of the *Code of Professional Responsibility*; and, accordingly, **IMPOSES** on him the penalty of **SUSPENSION FROM THE PRACTICE OF LAW** for a **PERIOD OF ONE (1) YEAR** effective from notice.

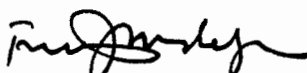
Let this decision be furnished to the Office of the Bar Confidant to be appended to the respondent's personal record as an attorney; to the Integrated Bar of the Philippines for its information and guidance; and to the Office of the Court Administrator for dissemination to all the courts of the Philippines.

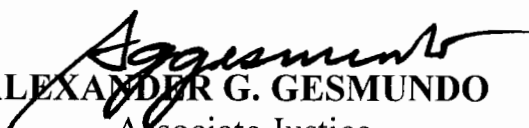
**SO ORDERED.**

  
LUCAS P. BERSAMIN  
Chief Justice

**WE CONCUR:**

  
MARIANO C. DEL CASTILLO  
Associate Justice

  
FRANCIS H. JARDELEZA  
Associate Justice

  
ALEXANDER G. GESMUNDO  
Associate Justice

  
ROSMARI D. CARANDANG  
Associate Justice