



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **June 15, 2020** which reads as follows:*

“A.C. No. 10779 [Formerly CBD Case No. 16-4908] – JOSEL JAY M. NUYDA, JR., complainant, versus ATTY. ELMER R. SUSANO, respondent.

In a Verified Complaint¹ dated March 23, 2015, Josel Jay M. Nuyda, Jr. (Nuyda) accused Atty. Elmer R. Susano (Atty. Susano), a public prosecutor of the Office of the City Prosecutor (OCP) of Caloocan City, with violations of the Lawyer’s Oath, Rule 6.01, Canon 6, Rule 10.03, Canon 10, and Rule 7.03, Canon 7 of the Code of Professional Responsibility. Nuyda alleged that he was surprised to receive a subpoena for libel dated March 20, 2014 and signed by Atty. Susano without the identity of the complaining party, a copy of the complaint, and supporting documentary evidence. In the said subpoena, Nuyda was directed to appear before Atty. Susano at the Judicial Complex of Caloocan City on April 2 and 30, 2014 for preliminary investigation. It stated that the presence of Nuyda was required and his failure to appear shall be considered a waiver on his part to participate in the hearing or to adduce controverting evidence. The subpoena also stated that documents submitted to the office would be available for examination and reproduction.²

Nuyda filed an urgent motion for the issuance of new subpoena and for the inhibition of Atty. Susano. He also manifested that he was being required to appear in Caloocan City for preliminary investigation without first being fully informed of the charges against him, and that it unduly imposes a burden on him considering that he

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¹ *Rollo*, pp. 1-7.

² *Id.* at 1-2.

lives in Camalig, Albay. Despite this motion, Nuyda claimed he was not served a new subpoena. He alleged that Atty. Susano agreed to the complaining party's ill motive to inflict persecution against him by misusing the criminal procedure.³ He prayed that Atty. Susano be suspended from the practice of law for one (1) year and six (6) months.⁴

In a Resolution⁵ dated July 1, 2015, the Court ordered Atty. Susano to file his comment on the complaint.

In his Comment,⁶ Atty. Susano prayed that the administrative complaint against him must be dismissed for lack of factual and legal bases.⁷ Atty. Susano explained that he acted on Nuyda's motion for inhibition by writing to the OCP-Caloocan City for his voluntary inhibition. As there are other cases involving the same parties, the OCP-Caloocan City inhibited itself from handling all the cases and forwarded all their case folders to the Department of Justice (DOJ). The DOJ, however, returned all case folders to the OCP-Caloocan City for appropriate action because the consensus was that the latter was not disqualified from investigating the case. Thus, Atty. Susano proceeded with the conduct of the preliminary investigation.⁸

Atty. Susano further explained that the Manual for Prosecutors allows the issuance of subpoena without the accompanying copy of the complaint. As regards the non-disclosure of the identity of the complainant, Atty. Susano explained that he merely adopted the form used in his office. He emphasized that Nuyda was not deprived of his right as he was able to file his counter-affidavit and participated in the preliminary investigation of the subject libel case.⁹

In a Resolution¹⁰ dated December 7, 2015, the Court referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

The Investigating Commissioner of the IBP Commission on Bar Discipline (IBP-CBD) set the case for mandatory conference on April 17, 2016 and required the parties to file their respective

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³ Id. at 3.

⁴ Id. at 5.

⁵ Id. at 13.

⁶ Id. at 14-21.

⁷ Id. at 18.

⁸ Id. at 16.

⁹ Id. at 17.

¹⁰ Id. at 66.

mandatory conference briefs within ten (10) days prior to the scheduled date of the conference.¹¹ Both parties complied and appeared during the hearing. Thereafter, the parties filed their respective positions papers.¹²

In his Report and Recommendation,¹³ the Investigating Commissioner of the IBP-CBD found that Section 13 of the 2008 National Prosecution Service (NPS) Revised Manual for Prosecutors (the Manual) clearly provides that the subpoena should contain the complaint, the affidavits of witnesses and the supporting documents. This is a reiteration of Rule 112 of the Rules of Court, which is an affirmation of the rights of an individual to a proper conduct of a preliminary investigation. While Section 15 of the Manual also provides that when circumstances warrant, the prosecutor may require the respondent to just appear at a designated time and place where he or she will then be furnished personally with the copies of the complaint, affidavits and pieces of evidence, this leeway must give way to the requirement in the same Section that parties residing in distant places should not be required to appear but should instead be furnished with the copies of the complaint, affidavits and pieces of evidence.¹⁴

The Investigating Commissioner also found Atty. Susano's defense that he merely copied the forms of the OCP-Caloocan City tenuous. The Investigating Commissioner noted that the copies of subpoenas Atty. Susano attached in his position paper revealed some differences, albeit only minor in form. This only proved that there was, in fact, no prescribed form. Also, the suggested forms of summons found in the Manual were different from the form used by Atty. Susano.¹⁵

The lapses of Atty. Susano, notwithstanding, the Investigating Commissioner found no malice or ill will on the part of Atty. Susano. So, too, the Investigating Commissioner duly noted that Nuyda was not deprived of his right to due process. He was allowed to submit his counter-affidavit and was able to adduce evidence even without his attendance. More importantly, the case was dismissed in his favor, thereby negating any imputation of malice on the part of Atty. Susano.¹⁶

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¹¹ Id. at 81-82.

¹² Id. at 101-108 and 136-148

¹³ Id. at 202-209. Rendered by Investigating Commissioner Atty. Patrick M. Velez.

¹⁴ Id. at 205-206.

¹⁵ Id. at 207.

¹⁶ Id. at 208.

Thus, in the absence of malice, the Investigating Commissioner recommended that Atty. Susano be spared from any penalty. However, in light of the findings that Atty. Susano committed mistakes and that subpoenas being issued by prosecutors do not adhere to applicable rules, the Investigating Commissioner ruled as follows:

WHEREFORE, under the attendant circumstances, it is [r]espectfully **RECOMMENDED** that Respondent Atty. Elmer R. Susano be made to take fifteen (15) units of criminal and civil procedure units over and above MCLE requirements to be made immediately at the earliest available time.

But, in the greater interest of the practice of law, it is also recommendation that a copy of this Disposition be provided to the Department of Justice to make its rules firmer, and for the purpose of providing advise and guidance to similarly situated prosecutors. In the same breadth, the Department of Justice is [please] requested to require the written explanation of its assistant prosecutors namely: Manuel Guiyab, Bayana M. Jamias, and Oscar T. Yu, regarding the summons that they issued which were submitted as evidence in this case.¹⁷

In its Notice of Resolution¹⁸ dated March 22, 2018, the IBP Board of Governors (IBP-BOG) resolved to adopt the findings of fact and recommendation of the Investigating Commissioner, with modification. The IBP-BOG resolved to dismiss the case against Atty. Susano and to delete the portion in the Report and Recommendation of the Investigating Commissioner suggesting that Atty. Susano be required to take a refresher course and requiring the other prosecutors to submit written explanation.

The Court dismisses the complaint for lack of jurisdiction. The rule is now well-settled that the accountability of lawyers performing or discharging their official duties as lawyers of the Government is always to be differentiated from their accountability as members of the Philippine Bar. The IBP has no jurisdiction to investigate government lawyers charged with administrative offenses involving the performance of their official duties.¹⁹

In his complaint, Nuyda alleged that Atty. Susano issued a subpoena against him relative to a libel case that did not conform to the rudimentary requirements of due process. For one, the complaining party was not indicated. Secondly, the complaint and its

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¹⁷ Id. at 209.

¹⁸ Id. at 200-201.

¹⁹ A.C. No. 11550, June 4, 2018, 864 SCRA 1, 7.

supporting documents were not appended to the subpoena. Nuyda was likewise ordered to attend two scheduled preliminary investigation hearings in Caloocan City despite his residence being in Albay. Nuyda concluded that these acts of Atty. Susano were in aid of the persecution initiated by the complaining party.

Clearly, therefore, the foregoing acts of Atty. Susano complained of arose from his performance or discharge of official duties as a prosecutor of the DOJ. Following *Trovela v. Robles*,²⁰ the authority to discipline Atty. Susano should pertain to his superior, the Secretary of Justice or to the Office of the Ombudsman, which similarly exercises disciplinary jurisdiction over prosecutors as public officials pursuant to Section 15, paragraph 1, of Republic Act No. 6770 (Ombudsman Act of 1989), to wit:

SECTION 15. *Powers, Functions and Duties.* – The Office of the Ombudsman shall have the following powers, functions and duties:

(1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the *Sandiganbayan* and, in the exercise of his primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases[.]

The power of the Office of the Ombudsman provided in the above-quoted Section of the Ombudsman Act of 1989 is, in turn, lifted from Section 13, paragraph (1),²¹ Article XI, of the 1987 Constitution. Thus, in *Alicias, Jr. v. Macatangay*,²² the Court held that the Office of the Ombudsman is the government agency responsible for enforcing administrative, civil, and criminal liability of government officials “in every case where the evidence warrants in order to **promote efficient service by the Government to the people.**”²³ The Court went on to elaborate that the jurisdiction of the Ombudsman encompasses **all kinds of malfeasance, misfeasance, and non-feasance** committed by any public officer or employee

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²⁰ Id.

²¹ SECTION 13. The Office of the Ombudsman shall have the following powers, functions, and duties:

(1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.

²² A.C. No. 7478, January 11, 2017, 814 SCRA 96, 103.

²³ Id. at 102. Underscoring supplied; emphasis in the original.

during his or her tenure.²⁴ Consequently, acts or omissions of public officials relating to the performance of their functions as government officials are within the administrative disciplinary jurisdiction of the Office of the Ombudsman.²⁵

WHEREFORE, the administrative complaint against Atty. Elmer R. Susano is **DISMISSED** for lack of jurisdiction on the part of the Integrated Bar of the Philippines.

SO ORDERED.”

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court *m. 10/15*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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²⁴ Id., citing *Samson v. Restrivera*, 662 Phil. 45, 52-53 (2011).

²⁵ Id. at 102-103.