

FERNANDO MARTIN PENA v. ATTY. LOLITO G. APARICIO
A.C. No. 7298, 25 JUNE 2007, Tinga, J. (Second Division)

Non-compliance with the requirement of attaching a certification against forum shopping shall be caused for the summary dismissal of a complaint or other initiatory pleading. But it would seem that the scenario sought to be avoided in failure to attach a certification against forum shopping, i.e. filing of multiple suits and the possibility of conflicting decisions, rarely happens in disbarment complaints considering that they are cognizable only by the Supreme Court motu proprio and the Integrated Bar of the Philippines (IBP) upon the verified complaint of any person. Thus, the pendency of another disciplinary action against the same respondent can still be ascertained with ease in the absence of a certification against forum shopping attached to the complaint.

Atty. Aparicio was the counsel of Grace Hufana in an illegal dismissal case filed before the National Labor Relations Commission against MOF Company, Inc. Atty. Aparicio submitted a claim for separation pay arising from the alleged illegal dismissal his client. The president of the company, complainant Fernando Pena, rejected the claim of illegal dismissal as being baseless. He instead sent Hufana a return to work notice, but in reply Atty. Aparicio sent a letter reiterating his client's claim for separation pay. In his letter, he also threatened Pena with the filing of criminal cases for tax evasion and falsification of documents should the latter fail to comply with the demand of separation pay.

Believing that the act of Atty. Aparicio was unethical, Pena filed an administrative complaint against him. The Report and Recommendation of the Investigating Commissioner of the Integrated Bar of the Philippines (IBP), however, recommended the dismissal of the complaint on the ground that Pena failed to file his position paper and to attach a certificate against forum shopping. The IBP Board of Governor approved the recommendation. When IBP denied Pena's Motion for Reconsideration, he filed a Petition for Review before the Supreme Court, alleging that he personally submitted and filed with the IBP his position paper. While Pena indeed submitted his position paper, he failed to offer any explanation for his failure to attach a certification against forum shopping in his complaint.

ISSUE:

Whether or not the failure to attach a certification against forum shopping in an administrative complaint against lawyers warrant the dismissal of the complaint

HELD:

Petition GRANTED.

Rule 7 of the Revised Rules of Court provides that the violation of the requirement of a certification against forum shopping attached in every case filed in courts and quasi-judicial agencies would constitute contempt of court and be cause for the summary dismissal of the complaint or other initiatory pleading. But the Court takes exception to this rule in cases of disbarment complaint.

Disciplinary proceedings against lawyers are *sui generis* as they are neither purely civil nor purely criminal. They involve more of an investigation by the Court into the conduct of one of its officers. Their primary objective is public interest and the real issue is whether or not the attorney is still a fit person to be allowed the privileges as such. In such posture, there can be really no occasion to speak of a complainant or a prosecutor.

Furthermore, the rationale for the requirement of a certification against forum shopping is to apprise a court of the pendency of another action involving the same issues in another court, tribunal or quasi-judicial agency, and thus prevent the filing of multiple suits and the possibility of conflicting decisions.

It is in this light that the Court takes a further look at the necessity of attaching a certification against forum shopping to a disbarment complaint. It would seem that the scenario sought to be avoided in non-compliance with this requirement rarely happens in disbarment complaints considering that these proceedings are either taken by the Court *motu proprio*, or by the IBP upon a verified complaint of any person. Thus, if the complainant in a disbarment case fails to attach a certification against forum shopping, the pendency of another disciplinary action against the same respondent may still be ascertained with ease.