

EN BANC

[A.C. No. 8111, December 09, 2020]

**ADELITA S. VILLAMOR, COMPLAINANT, VS. ATTY. ELY GALLAND
A. JUMAO-AS, RESPONDENT.**

DECISION

HERNANDO, J.:

Adelita S. Villamor (Villamor) charges Atty. Ely Galland A. Jumao-as (Atty. Jumao-as) with violation of the Code of Professional Responsibility (CPR) for representing conflicting interests.

Villamor alleged that Felipe Retubado (Retubado) and Atty. Jumao-as coaxed her into organizing a lending company. Retubado volunteered to handle the day-to-day operation while Atty. Jumao-as would handle the legal side of the business. Persuaded by these representations, Villamor acceded.

True to his word, respondent took care of the registration of the company with the Securities and Exchange Commission (SEC) as well as preparation and drafting of some legal documents such as the Articles of Incorporation (AOI).^[1] In addition, when the company needed additional funds, Atty. Jumao-as informed Villamor that she could borrow from Debbie Yu (Yu). Soon after, Atty. Jumao-as delivered the amount of P500,000.00 to Villamor, which amount was infused into the lending business as additional capital. Atty. Jumao-as then prepared a promissory note where all three of them signed as co-borrowers. Villamor, however, was neither given a copy of the said promissory note nor had any occasion to meet Yu.

In March 2007, respondent requested Villamor to sign blank SEC pre-printed AOI forms. That same month, Atty. Jumao-as gave Villamor a copy of the Certificate of Registration^[2] of their lending company which they named as AEV Villamor Credit, Inc. To her surprise, Villamor noted that respondent^[3] and Retubado each own 30,000 shares of stock or 48% of the company despite the fact that they only contributed a minimal amount of money.

In April 2008, respondent told Villamor to issue a postdated check amounting to P650,000.00 in the name of Yu as a belated security for their loan of P500,000.00, with P150,000.00 representing accrued interest. Respondent assured Villamor that said check will not be negotiated.

In May 2008, Atty. Jumao-as and Retubado left Villamor's company and joined Yu's 3E's Debt Equity Grant Co., also a lending company. Subsequently, Villamor also came to know that Atty. Jumao-as and Retubado were trying to convince the collectors of AEV Villamor Credit, Inc. to abandon Villamor and to join their new lending company. They told Villamor's collectors to remit their collections to 3E's Debt Equity Grant Co. since Villamor owed Yu the amount of P650,000.00 and that

they could join their new company after they have fully remitted the amount of P650,000.00.

Worse, on October 8, 2008, Atty. Jumao-as sent a demand letter to Villamor, for and in behalf of Yu, demanding payment of P650,000.00.

Hence, this complaint.^[4]

In fine, Villamor alleged that respondent represented conflicting interests when he sent her the demand letter in behalf of his new client, Yu. Atty. Jumao-as also breached her trust and confidence when he deceitfully organized 3E's Debt Equity Grant Co. in direct competition to AEV Villamor Credit, Inc. and for manipulating her collectors into leaving AEV Villamor Credit, Inc. and remitting their collections to 3E's Debt Equity Grant, Co.

Respondent denied any lawyer-client relationship with Villamor. He claimed that it was Retubado who engaged his services solely for the incorporation of AEV Villamor Credit, Inc. He admitted having facilitated the amount of P500,000.00 loaned from Yu, his client. He averred that he was the one who delivered the amount to Villamor and had her sign a promissory note which was prepared by Yu's secretary.

Atty. Jumao-as stressed that his participation was solely to facilitate the incorporation of AEV Villamor Credit, Inc. He denied the imputation that Villamor hired his services as the lawyer of the said lending company. Lastly, he asserted that 3E's Debt Equity Grant Co. is a proprietorship business owned by Yu.

Report and Recommendation of the IBP:

The Investigating Commissioner^[5] found respondent guilty of representing conflicting interest and thus recommended that he be suspended from the practice of law for a period of one year with warning that a repetition of the same or similar act would be dealt with severely.^[6] The Board of Governors (BOG), in its Resolution No. XX-2013-140^[7] dated February 13, 2013, unanimously adopted the findings of the Investigating Commissioner but with modification that the period of suspension be increased to two years with warning.

Respondent sought reconsideration stating that as early as December 5, 2009, Villamor had already filed her Affidavit of Desistance. However, the IBP was not swayed and thus denied respondent's motion for reconsideration in its Resolution No. XXI-2014-112^[8] dated March 21, 2014.

Our Ruling

We adopt the findings of the IBP that respondent is guilty of representing conflicting interests and approve its recommendation to suspend respondent from the practice of law for two (2) years.

In my recent *ponencia*,^[9] we discussed conflict of interest in this wise:

Rules on conflict of interest are embodied in Rule 15.03, Canon 15 of the CPR, which states, to wit:

Canon 15 — A lawyer shall observe candor, fairness and loyalty in all his dealings and transactions with his clients.

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Rule 15.03 — A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts.

In *Hornilla v. Salunat*, the Court explained the concept of conflict of interest in this wise:

There is conflict of interest when a lawyer represents inconsistent interests of two or more opposing parties. The test is "whether or not in behalf of one client, it is the lawyer's duty to fight for an issue or claim, but it is his duty to oppose it for the other client. In brief, if he argues for one client, this argument will be opposed by him when he argues for the other client." This rule covers not only cases in which confidential communications have been confided, but also those in which no confidence has been bestowed or will be used. Also, there is conflict of interests if the acceptance of the new retainer will require the attorney to perform an act which will injuriously affect his first client in any matter in which he represents him and also whether he will be called upon in his new relation to use against his first client any knowledge acquired through their connection. Another test of the inconsistency of interests is whether the acceptance of a new relation will prevent an attorney from the full discharge of his duty of undivided fidelity and loyalty to his client or invite suspicion of unfaithfulness or double dealing in the performance thereof.

Simply put, in determining whether a lawyer is guilty of violating the rules on conflict of interest under the CPR, it is essential to determine whether: (1) "a lawyer is duty-bound to fight for an issue or claim in behalf of one client and, at the same time, to oppose that claim for the other client;" (2) "the acceptance of a new relation would prevent the full discharge of a lawyer's duty of undivided fidelity and loyalty to the client or invite suspicion of unfaithfulness or double-dealing in the performance of that duty;" and (3) "a lawyer would be called upon in the new relation to use against a former client any confidential information acquired through their connection or previous employment."^[10] (Citations omitted)

Thus, to determine whether a conflict of interests exists, it is necessary to first ascertain whether a lawyer-client relationship existed between Villamor and respondent on one hand, and Yu and respondent on the other.

The lawyer-client relationship begins from the moment a client seeks the lawyer's advice upon a legal concern. The seeking may be for consultation on transactions or other legal concerns, or for representation of the client in an actual case in the courts or other *fora*. From that