

EN BANC

[A.C. No. 5582, January 24, 2017]

ARTHUR O. MONARES, COMPLAINANT, V. ATTY. LEVI P. MUÑOZ, RESPONDENT.

[A.C. No. 5604, January 24, 2017]

ALBAY ELECTRIC COOPERATIVE, INC., COMPLAINANT, V. ATTY. LEVI P. MUÑOZ, RESPONDENT.

[A.C. No. 5652, January 24, 2017]

BENJILIEH M. CONSTANTE,^[1] COMPLAINANT, V. ATTY. LEVI P. MUÑOZ, RESPONDENT.

D E C I S I O N

CAGUIOA, J:

For resolution is the Joint Petition for Review with Prayer for Absolution and/or Clemency^[2] (Joint Petition) dated May 14, 2009 filed by respondent Atty. Levi P. Muñoz (Muñoz) , in connection with the complaints for disbarment filed by by Arthur O. Monares (Monares), Atty. Oliver O. Olaybal (Olaybal) purportedly representing Albay Electric Cooperative, Inc. (ALECO), and Benjilieh M. Constante (Constante), dated January 17, 2002, February 4, 2002 and March 21, 2002, respectively.

Monares is the plaintiff in Civil Case No. 9923 filed against Ludolfo Muñoz (Ludolfo) before the Regional Trial Court (RTC) of Legazpi City. In his complaint, Monares alleged that Muñoz represented his brother Ludolfo in the said case during regular government hours while employed as Provincial Legal Officer of Albay City.^[3]

Under the chairmanship of Olaybal, ALECO's old board of directors (BOD) engaged Muñoz as retained counsel sometime in June 1998. Olaybal averred that Muñoz did not inform ALECO's old BOD that he was employed as Provincial Legal Officer at such time. Olaybal raised that after its administrator, the National Electrification Administration (NEA), deactivated the old BOD on the ground of mismanagement, Muñoz served as retained counsel of the NEA-appointed team which took over the management of ALECO. Moreover, Olaybal alleged that Muñoz illegally collected payments in the form of notarial and professional fees in excess of what was agreed upon in their retainer agreement.^[4]

Constante is the Executive Assistant for Legal Affairs of Sunwest Construction and Development Corporation (Sunwest). Constante claimed that Muñoz filed ten (10) cases against Sunwest on Ludolfo's behalf before the Office of the Ombudsman (Ombudsman) while he was serving as Provincial Legal Officer.^[5]

All three (3) complaints prayed that Muñoz be disbarred for unlawfully engaging in private practice. In addition, Olaybal sought Muñoz's disbarment for acts of disloyalty, particularly, for violating the rule against conflict of interest.^[6]

To support their position, the complainants raised that Muñoz had been previously disciplined by the Ombudsman for two (2) counts of unauthorized practice of profession in OMB-ADM-101-0462, and was meted the penalty of removal and dismissal from service. The complainants further manifested that Muñoz had been convicted by the Municipal Trial Court in Cities (MTCC) of Legazpi City in Criminal Case Nos. 25568 and 25569 for violation of Section 7(b)(2) in relation to Section 11 of Republic Act No. 6713.^[7] Muñoz's conviction has since become final pursuant to the Court's Resolution dated June 14, 2004 in G.R. No. 160668.^[8]

In his respective comments to the complaints,^[9] Muñoz claimed that he had requested Governor Al Francis C. Bichara (Governor Bichara) for authority to continue his private practice shortly after his appointment. This request was granted on July 18, 1995^[10] Thereafter, Muñoz submitted the same request to Rafael C. Alunan III, then Secretary of the Department of the Interior and Local Government (DILG).^[11] On September 8, 1995, Acting Secretary Alexander P. Aguirre granted Muñoz's request, under the following conditions:

1. That **no government time**, personnel, funds or supplies **shall be utilized in connection** (sic) and that no conflict of interest with your present position as Provincial Legal Officer shall arise thereby;
2. That the time so devoted outside of office hours, the place(s) and under what circumstances you can engage in private employment shall be fixed by the Governor of Albay to the end that it will not impair in any way your efficiency; and
3. That any violation of the above restrictions will be a ground for the cancellation and/or revocation of this authority.^[12] (Emphasis supplied)

Pursuant to the DILG's authorization, Governor Bichara imposed the following conditions upon Muñoz:

- a. [Y]ou cannot handle cases against the Province of Albay;
- b. [Y]ou will be on call and you will have no fix (sic) working hours provided that the efficiency of the Provincial Legal Office shall not be prejudiced;
- c. [Y]ou are exempted in (sic) accomplishing your Daily Time Record considering the limitation already mentioned above; [and]
- d. In addition to the above enumeration[,], you are to perform functions subject to limitations in Sec. 481 of RA 7160.^[13]

Muñoz emphasized that his authority to engage in private practice was renewed by Governor Bichara on July 3, 1998 for his second term ending in July 2001, and again on July 5, 2001 for his third term ending in July 2004.^[14]

The complaints were separately referred by the Court to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.^[15] The complaints were then consolidated through the Order dated January 16, 2003 issued by Commissioner Milagros V. San Juan.^[16] Subsequently, the complaints underwent a series of re-assignments, until finally assigned to Commissioner Dorotea B. Aguila.^[17]

In his Report dated March 11, 2005^[18] (IBP Report), Commissioner Aguila recommended that Muñoz be found guilty of gross misconduct and violation of Rules 1.01, 6.02, 15.01 and 15.03 of the Code of Professional Responsibility (CPR). The penalty of suspension from the practice of law for an aggregate period of four (4) years^[19] was recommended. On automatic review, the IBP Board of Governors (IBP-BOG) approved and adopted Commissioner Aguila's recommendation in a Resolution dated October 22, 2005.^[20]

On December 22, 2005, Muñoz filed an Ex-Parte Appeal for Mercy, Clemency and Compassion before the IBP-BOG, praying that the recommended penalty be reduced to one (1) year.^[21] This appeal was denied on January 28, 2006.^[22]

Muñoz filed before this Court an Ex-Parte Appeal for Mercy, Clemency, Forgiveness and Compassion^[23] (Appeal) dated April 8, 2006 praying for the reduction of the recommended penalty of suspension for four (4) years to one (1) year or less, and the dismissal of the complaints for disbarment filed against him. As an alternative prayer, Muñoz requested that he be granted special limited authority to practice law until all his pending cases are terminated.^[24]

In his Appeal, Muñoz, insisted that when he served as Provincial Legal Officer from June 1995 to May 2002, he engaged in private practice pursuant to the three (3) written authorities issued by Governor Bichara, and the written authority of the DILG issued during his first term, which he claims had never been revoked. Muñoz also argued that no conflict of interest existed between ALECO's old BOD and the NEA management team, since he was engaged as retained counsel of ALECO as an institution, not its management teams.^[25]

On August 28, 2006, the Court resolved to remand Muñoz's Appeal to the IBP for disposition.^[26]

Acting on Muñoz's Appeal, the IBP-BOG issued a Resolution reducing the recommended period of suspension from four (4) to three (3) years.^[27] Unsatisfied, Muñoz filed a Motion for Reconsideration, which the IBP-BOG denied on December 11, 2008.^[28]

Aggrieved, Muñoz elevated his case anew to this Court through this Joint Petition. In fine, Muñoz reiterates the allegations in his Appeal, with the additional assertion that the fees he collected from ALECO were contemplated under their retainer agreement.^[29]

The Court agrees with the IBP-BOG's findings and recommendations.

*Muñoz violated the conditions of his
DILG authorization.*

Munoz's DILG authorization prohibited him from utilizing government time for his private practice. As correctly observed by Commissioner Aguila, Rule XVII of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws (Omnibus Rules), requires government officers and employees of all departments and agencies, except those covered by special laws, to render not less than eight (8) hours of work a day for five (5) days a week, or a total of forty (40) hours a week.^[30] The number of required weekly working hours may not be reduced, even in cases where the department or agency adopts a flexible work schedule.^[31]

Notably, Muñoz did not deny Monares' allegation that he made at least eighty-six (86) court appearances in connection with at least thirty (30) cases from April 11, 1996 to August 1, 2001.^[32] He merely alleged that his private practice did not prejudice the functions of his office.

Court appearances are necessarily made within regular government working hours, from 8:00 in the morning to 12:00 noon, and 1:00 to 5:00 in the afternoon.^[33] Additional time is likewise required to study each case, draft pleadings and prepare for trial. The sheer volume of cases handled by Muñoz clearly indicates that government time was necessarily utilized in pursuit of his private practice, in clear violation of the DILG authorization and Rule 6.02^[34] of the CPR.

Muñoz should have requested for authority to engage in private practice from the Secretary of DILG for his second and third terms.

Acting Secretary Aguirre's grant of authority cannot be unreasonably construed to have been perpetual. Moreover, Muñoz cannot claim that he believed in good faith that the authority granted by Governor Bichara for his second and third terms sufficed.

Memorandum No. 17 dated September 4, 1986 (Memorandum 17) , which Muñoz himself cites in his Joint Petition, is clear and leaves no room for interpretation. The power to grant authority to engage in the practice of one's profession to officers and employees in the public service lies with the head of the department, in accordance with Section 12, Rule XVIII of the Revised Civil Service Rules which provides, in part:

Sec. 12. No officer or employee shall engage directly in any private business, vocation, or profession or be connected with any commercial, credit, agricultural, or industrial undertaking without a **written permission from the head of Department**: Provided, That this prohibition will be absolute in the case of those officers and employees whose duties and responsibilities require that their entire time be at the disposal of the Government: Provided, further, That if an employee is granted permission to engage in outside activities, the time so devoted outside of office hours should be fixed by the chief of the agency to the end that it will not impair in any way the efficiency of the officer or employee x x x. (Emphasis and underscoring supplied)

Memorandum 17 was issued more than nine (9) years prior to Muñoz's appointment as Provincial Legal Officer, hence, he cannot feign ignorance thereof. As a local