

EN BANC

[A.C. No. 7360, July 24, 2012]

ATTY. POLICARPIO I. CATALAN, JR., COMPLAINANT, VS. ATTY. JOSELITO M. SILVOSA, RESPONDENT.

DECISION

PER CURIAM:

This is a complaint filed by Atty. Policarpio I. Catalan, Jr. (Atty. Catalan) against Atty. Joselito M. Silvosa (Atty. Silvosa). Atty. Catalan has three causes of action against Atty. Silvosa: (1) Atty. Silvosa appeared as counsel for the accused in the same case for which he previously appeared as prosecutor; (2) Atty. Silvosa bribed his then colleague Prosecutor Phoebe Toribio (Pros. Toribio) for P30,000; and (3) the Sandiganbayan convicted Atty. Silvosa in Criminal Case No. 27776 for direct bribery. Integrated Bar of the Philippines' (IBP) Commissioner for Bar Discipline Dennis A.B. Funa (Comm. Funa) held Atty. Silvosa liable only for the first cause of action and recommended the penalty of reprimand. The Board of Governors of the IBP twice modified Comm. Funa's recommendation: first, to a suspension of six months, then to a suspension of two years.

Atty. Silvosa was an Assistant Provincial Prosecutor of Bukidnon and a Prosecutor in Regional Trial Court (RTC), Branch 10, Malaybalay City, Bukidnon. Atty. Silvosa appeared as public prosecutor in Criminal Case No. 10256-00, "People of the Philippines v. SPO2 Elmor Esperon y Murillo, et al." (Esperon case), for the complex crime of double frustrated murder, in which case Atty. Catalan was one of the private complainants. Atty. Catalan took issue with Atty. Silvosa's manner of prosecuting the case, and requested the Provincial Prosecutor to relieve Atty. Silvosa.

In his first cause of action, Atty. Catalan accused Atty. Silvosa of appearing as private counsel in a case where he previously appeared as public prosecutor, hence violating Rule 6.03 of the Code of Professional Responsibility.^[1] Atty. Catalan also alleged that, apart from the fact that Atty. Silvosa and the accused are relatives and have the same middle name, Atty. Silvosa displayed manifest bias in the accused's favor. Atty. Silvosa caused numerous delays in the trial of the Esperon case by arguing against the position of the private prosecutor. In 2000, Provincial Prosecutor Guillermo Ching granted Atty. Catalan's request to relieve Atty. Silvosa from handling the Esperon case. The RTC rendered judgment convicting the accused on 16 November 2005. On 23 November 2005, Atty. Silvosa, as private lawyer and as counsel for the accused, filed a motion to reinstate bail pending finality of judgment of the Esperon case.

In his second cause of action, Atty. Catalan presented the affidavit of Pros. Toribio. In a case for frustrated murder where Atty. Catalan's brother was a respondent, Pros. Toribio reviewed the findings of the investigating judge and downgraded the

offense from frustrated murder to less serious physical injuries. During the hearing before Comm. Funa, Pros. Toribio testified that, while still a public prosecutor at the time, Atty. Silvosa offered her ₱30,000 to reconsider her findings and uphold the charge of frustrated murder.

Finally, in the third cause of action, Atty. Catalan presented the Sandiganbayan's decision in Criminal Case No. 27776, convicting Atty. Silvosa of direct bribery on 18 May 2006. Nilo Lanticse (Lanticse) filed a complaint against Atty. Silvosa before the National Bureau of Investigation (NBI). Despite the execution of an affidavit of desistance by the complainant in a homicide case in favor of Lanticse's father-in-law, Arsenio Cadinan (Cadinan), Cadinan still remained in detention for more than two years. Atty. Silvosa demanded ₱15,000 from Lanticse for the dismissal of the case and for the release of Cadinan. The NBI set up an entrapment operation for Atty. Silvosa. GMA 7's television program *Imbestigador* videotaped and aired the actual entrapment operation. The footage was offered and admitted as evidence, and viewed by the Sandiganbayan. Despite Atty. Silvosa's defense of instigation, the Sandiganbayan convicted Atty. Silvosa. The dispositive portion of Criminal Case No. 27776 reads:

WHEREFORE, this court finds JOSELITO M. SILVOSA GUILTY, beyond reasonable doubt, of the crime of direct bribery and is hereby sentenced to suffer the penalty of:

(A) Imprisonment of, after applying the Indeterminate Sentence Law, one year, one month and eleven days of *prision correccional*, as minimum, up to three years, six months and twenty days of *prision correccional*, as maximum;

(B) Fine of TEN THOUSAND PESOS (Php 10,000.00), with subsidiary imprisonment in case of insolvency; and

(C) All other accessory penalties provided for under the law.

SO ORDERED.^[2]

In his defense, on the first cause of action, Atty. Silvosa states that he resigned as prosecutor from the Esperon case on 18 October 2002. The trial court released its decision in the Esperon case on 16 November 2005 and cancelled the accused's bail. Atty. Silvosa claims that his appearance was only for the purpose of the reinstatement of bail. Atty. Silvosa also denies any relationship between himself and the accused.

On the second cause of action, Atty. Silvosa dismisses Pros. Toribio's allegations as "self-serving" and "purposely dug by [Atty. Catalan] and his puppeteer to pursue persecution."

On the third cause of action, while Atty. Silvosa admits his conviction by the Sandiganbayan and is under probation, he asserts that "conviction under the 2nd paragraph of Article 210 of the Revised Penal Code, do [sic] not involve moral turpitude since the act involved 'do [sic] not amount to a crime.'" He further claims

that "it is not the lawyer in respondent that was convicted, but his capacity as a public officer, the charge against respondent for which he was convicted falling under the category of crimes against public officers x x x."

In a Report and Recommendation dated 15 September 2008, Comm. Funa found that:

As for the first charge, the wordings and prohibition in Rule 6.03 of the *Code of Professional Responsibility* [are] quite clear. [Atty. Silvosa] did intervene in Criminal Case No. 10246-00. [Atty. Silvosa's] attempt to minimize his role in said case would be unavailing. The fact is that he is presumed to have acquainted himself with the facts of said case and has made himself familiar with the parties of the case. Such would constitute sufficient intervention in the case. The fact that, subsequently, [Atty. Silvosa] entered his appearance in said case only to file a *Motion to Post Bail Bond Pending Appeal* would still constitute a violation of Rule 6.03 as such act is sufficient to establish a lawyer-client relation.

As for the second charge, there is certain difficulty to dissect a claim of bribery that occurred more than seven (7) years ago. In this instance, the conflicting allegations are merely based on the word of one person against the word of another. With [Atty. Silvosa's] vehement denial, the accusation of witness [Pros.] Toribio stands alone unsubstantiated. Moreover, we take note that the alleged incident occurred more than seven (7) years ago or in 1999, [l]ong before this disbarment case was filed on November 2006. Such a long period of time would undoubtedly cast doubt on the veracity of the allegation. Even the existence of the bribe money could not be ascertained and verified with certainty anymore.

As to the third charge, [Atty. Silvosa] correctly points out that herein complainant has no personal knowledge about the charge of extortion for which [Atty. Silvosa] was convicted by the Sandiganbayan. [Atty. Catalan] was not a party in said case nor was he ever involved in said case. The findings of the Sandiganbayan are not binding upon this Commission. The findings in a criminal proceeding are not binding in a disbarment proceeding. No evidence has been presented relating to the alleged extortion case.

PREMISES CONSIDERED, it is submitted that [Atty. Silvosa] is GUILTY only of the First Charge in violating Rule 6.03 of the Code of Professional Responsibility and should be given the penalty of REPRIMAND.

Respectfully submitted.^[3]

In a Resolution dated 9 October 2008, the IBP Board of Governors adopted and approved with modification the Report and Recommendation of Comm. Funa and suspended Atty. Silvosa from the practice of law for six months. In another Resolution dated 28 October 2011, the IBP Board of Governors increased the penalty of Atty. Silvosa's suspension from the practice of law to two years. The

Office of the Bar Confidant received the notice of the Resolution and the records of the case on 1 March 2012.

We sustain the findings of the IBP only in the first cause of action and modify its recommendations in the second and third causes of action.

Atty. Catalan relies on Rule 6.03 which states that "A lawyer shall not, after leaving government service, accept engagement or employment in connection with any matter in which he had intervened while in said service." Atty. Silvosa, on the hand, relies on Rule 2.01 which provides that "A lawyer shall not reject, except for valid reasons the cause of the defenseless or the oppressed" and on Canon 14 which provides that "A lawyer shall not refuse his services to the needy."

We agree with Comm. Funa's finding that Atty. Silvosa violated Rule 6.03. When he entered his appearance on the Motion to Post Bail Bond Pending Appeal, Atty. Silvosa conveniently forgot Rule 15.03 which provides that "A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of facts." Atty. Silvosa's attempts to minimize his involvement in the same case on two occasions can only be described as desperate. He claims his participation as public prosecutor was only to appear in the arraignment and in the pre-trial conference. He likewise claims his subsequent participation as collaborating counsel was limited only to the reinstatement of the original bail. Atty. Silvosa will do well to take heed of our ruling in *Hilado v. David*:^[4]

An attorney is employed — that is, he is engaged in his professional capacity as a lawyer or counselor — when he is listening to his client's preliminary statement of his case, or when he is giving advice thereon, just as truly as when he is drawing his client's pleadings, or advocating his client's pleadings, or advocating his client's cause in open court.

x x x x

Hence the necessity of setting down the existence of the bare relationship of attorney and client as the yardstick for testing incompatibility of interests. This stern rule is designed not alone to prevent the dishonest practitioner from fraudulent conduct, but as well to protect the honest lawyer from unfounded suspicion of unprofessional practice. It is founded on principles of public policy, on good taste. As has been said in another case, the question is not necessarily one of the rights of the parties, but as to whether the attorney has adhered to proper professional standard. With these thoughts in mind, it behooves attorneys, like Caesar's wife, not only to keep inviolate the client's confidence, but also to avoid the appearance of treachery and double-dealing. Only thus can litigants be encouraged to entrust their secrets to their attorneys which is of paramount importance in the administration of justice.

Indeed, the prohibition against representation of conflicting interests applies although the attorney's intentions were honest and he acted in good faith.^[5]