612 Phil. 63

SECOND DIVISION

[A.M. No. RTJ-08-2132 [Formerly A.M. OCA IPI No. 07-2549-RTJ], July 31, 2009]

ATTY. FLORENCIO ALAY BINALAY, COMPLAINANT, VS. JUDGE ELIAS O. LELINA, JR., RESPONDENT.

D E C I S I O N

CARPIO MORALES, J.:

By Complaint of July 5, 2006,[1] Atty. Florencio Alay Binalay (complainant), head agent of the National Bureau of Investigation in Bayombong, Nueva Vizcaya, administratively charged Judge Elias O. Lelina, Jr. (respondent), presiding judge of Branch 32 of the Regional Trial Court (RTC) of Cabarroguis, Quirino, for violation of Section 35, Rule 138 of the Rules of Court and Rule 5.07, Canon 5 of the Code of Judicial Conduct.

The Court, by Order of August 5, 1998, preventively suspended respondent on account of an earlier administrative complaint filed by Divina Perez and Margie Monforte, docketed as A.M. No. RTJ-98-1415,[2] charging respondent with harassment in connection with the criminal complaint for Rape filed against him, which he allegedly committed against Margie Monforte, and the complaint for Abduction with Rape and Slight Illegal Detention filed by Divina Perez.

In view of the above-said criminal complaints against him, respondent was placed under detention from the time of his voluntary surrender on November 18, 1998 until his release on July 28, 2005 following his acquittal by the RTC, Branch 27, Manila which reversed its earlier decision of conviction after the conduct of a new trial.

On January 11, 2006, respondent filed a Motion for Early Resolution[3] of A.M. No. RTJ-98-1415 praying for a resolution in his favor, given his acquittal in the criminal cases against him. He subsequently filed a Manifestation, Appeal and Omnibus Motion of June 1, 2006[4] appealing to the Court's "sense of understanding, charity and justice" to grant him the permission to practice law during the remainder of his preventive suspension or, if such cannot be granted, to consider him resigned from the judiciary. It turned out that before he filed the above-said Manifestation, Appeal and Omnibus Motion, respondent engaged in the private practice of law. Thus he represented Melanio Agustin and Patricio Bautista in Criminal Case No. 5192, for violation of Section 68 of Presidential Decree No. 705, pending before the RTC, Branch 27, of Bayombong, Nueva Vizcaya, as shown by a Notice of Hearing dated May 10, 2006[5] addressed to him as counsel for the accused, as well as pleadings[6] signed by him on April 10, 2006 and May 11, 2006. And he also represented a certain Agnes Mariano Gabatin in Civil Case No. 632-2006 before the RTC, Branch 32 of Cabarroguis, Quirino, as shown by a motion dated May 21,

2006[7] signed by him. The pleadings filed in both cases were signed by him as a partner of the Bartolome Lelina Calimag Densing & Associates Law Offices.[8]

Respondent was thus required to comment on the present Complaint of July 5, 2006 within 10 days from receipt of the Office of the Court Administrator (OCA's) 1st Indorsement of July 10, 2006.[9] (The directive for respondent to comment on the present complaint was later reiterated by the OCA by 1st Tracer of September 5, 2006).[10]

In the meantime, the OCA, by Memorandum of August 17, 2006, directed respondent to desist from engaging in the practice of law pending the Court's resolution of his above-stated Manifestation, Appeal and Omnibus Motion. Responding, respondent, by letter of October 9, 2006 to the OCA, prayed that the "desist order" be set aside and a new one issued considering him resigned and thus not covered by the Code of Judicial Conduct. This letter was, by November 13, 2006 Memorandum of the Court Administrator to then Associate Justice Reynato S. Puno, "treated as urgent motion for the early resolution of the administrative complaint [A.M. No. RTJ-98-1415] against him."[11]

In his October 14, 2006 Comment[12] on the present complaint, respondent posits that the prohibition to engage in the private practice of law applies only to judges who are in the active service and should not cover those under suspension. He stresses that during his preventive suspension and following his release from detention, he was forced to engage in the private practice of law, the only profession known to him, due to "his impoverished life" and "the continuous sufferings of his wife and children;" and that the present administrative case was ill-motivated as complainant bears a grudge against him for his failure to convince his (respondent's) client, Agnes Mariano Gabatin (Agnes) to desist from her complaint against herein complainant pending before the Office of the Ombudsman.

In his Reply to respondent's Comment,[13] complainant denies respondent's attribution to him of ill-motive, explaining that the complaint before the Office of the Ombudsman was filed by Agnes, as advised by respondent, to stymie him from performing his functions as a law enforcer.

By Resolution of March 28, 2007, the Court directed the consolidation of the present complaint with A.M. No. RTJ-98-1415,[14] which directive was later revoked by Resolution of December 12, 2007,[15] A.M. No. RTJ-98-1415 having already been dismissed by Resolution of August 13, 2007[16] (exonerating respondent of the two administrative charges against him).

By Memorandum of May 20, 2008,[17] the OCA, in the present complaint, finds respondent guilty of unauthorized practice of law since by "being merely suspended and not dismissed from [the] service, he remains to be bound by the prohibition to practice conformably with the provision of the code." The OCA thus recommends a penalty of three-month suspension from the service without pay.

Ubi lex non distinguit nec nos distinguire debemos. Where the law does not distinguish, the courts should not distinguish.[18] Since Section 35, Rule 138 of the

Rules of Court[19] and Section 11, Canon 4 of the New Code of Judicial Conduct for the Philippine Judiciary[20] does not make any distinction in prohibiting judges from engaging in the private practice of law while holding judicial office, no distinction should be made in its application. In the present case, respondent having been merely suspended and not dismissed from the service, he was still bound under the prohibition.

Apropos is this Court's ruling in *Tabao v. Judge Asis*:[21]

> x x x Specifically, Section 35 of Rule 138 was promulgated pursuant to the constitutional power of the Court to regulate the practice of law. It is based on sound reasons of public policy, for there is no question that the rights, duties, privileges and functions of the office of an attorney-at-law are so inherently incompatible with the high official functions, duties, powers, discretions and privileges of a judge of the Regional Trial Court. This rule is obligatory upon the judicial officers concerned to give their full time and attention to their judicial duties, prevent them from extending special favors for their own private interests and assure the public of impartiality in the performance of their functions. These objectives are dictated by a sense of moral decency and the desire to promote public interest.[22] (Underscoring supplied)

Admitting having engaged in the private practice of law while he was under preventive suspension, respondent explains that he was forced to do so out of his sense of responsibility to ameliorate the pitiful condition of his family. The justification does not lie. As a member of the judiciary, albeit a suspended one, he still had the duty to comply with the Rules and the New Code of Judicial Conduct.

That respondent tried to secure an authorization to engage in private practice pending the resolution of A.M. No. RTJ-98-1415[23] shows his awareness of the proscription against engaging in the private practice of law.

Additionally, a judge should not permit a law firm, of which he was formerly an active member, to continue to carry his name in the firm name as that might create the impression that the firm possesses an improper influence with the judge which consequently is likely to impel those in need of legal services in connection with matters before him to engage the services of the firm. A judge cannot do indirectly what the Constitution prohibits directly, in accordance with the legal maxim, *quando aliquid prohibitur ex directo, prohibitur et per obliquum* or what is prohibited directly is prohibited indirectly.[24]

By allowing his name to be included in the firm name "Bartolome Lelina Calimag Densing & Associates Law Offices"[25] while holding a judicial office, he held himself to the public as a practicing lawyer, in violation of the Rules and the norms of judicial ethics.

Under Sections 9 and 11(B), Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10 SC,[26] unauthorized practice of law is classified as a less serious charge punishable by suspension from office without salary and other benefits for