

## FIRST DIVISION

[ A.C. NO. 6836, January 23, 2006 ]

**LETICIA GONZALES, COMPLAINANT, VS. ATTY. MARCELINO CABUCANA, RESPONDENT.**

### R E S O L U T I O N

**AUSTRIA-MARTINEZ, J.:**

Before this Court is a complaint filed by Leticia Gonzales (Gonzales) praying that Atty. Marcelino Cabucana, (respondent) be disbarred for representing conflicting interests.

On January 8, 2004, Gonzales filed a petition before the Integrated Bar of the Philippines (IBP) alleging that: she was the complainant in a case for sum of money and damages filed before the Municipal Trial Court in Cities (MTCC) of Santiago City, docketed as Civil Case No. 1-567 where she was represented by the law firm CABUCANA, CABUCANA, DE GUZMAN AND CABUCANA LAW OFFICE, with Atty. Edmar Cabucana handling the case and herein respondent as an associate/partner; on February 26, 2001, a decision was rendered in the civil case ordering the losing party to pay Gonzales the amount of P17,310.00 with interest and P6,000.00 as attorney's fees; Sheriff Romeo Gatcheco, failed to fully implement the writ of execution issued in connection with the judgment which prompted Gonzales to file a complaint against the said sheriff with this Court; in September 2003, Sheriff Gatcheco and his wife went to the house of Gonzales; they harassed Gonzales and asked her to execute an affidavit of desistance regarding her complaint before this Court; Gonzales thereafter filed against the Gatchecos criminal cases for trespass, grave threats, grave oral defamation, simple coercion and unjust vexation; notwithstanding the pendency of Civil Case No. 1-567, where respondent's law firm was still representing Gonzales, herein respondent represented the Gatchecos in the cases filed by Gonzales against the said spouses; respondent should be disbarred from the practice of law since respondent's acceptance of the cases of the Gatchecos violates the lawyer-client relationship between complainant and respondent's law firm and renders respondent liable under the Code of Professional Responsibility (CPR) particularly Rules 10.01, [1] 13.01, [2] 15.02, [3] 15.03, [4] 21.01 [5] and 21.02. [6]

On January 9, 2004, the IBP-Commission on Bar Discipline ordered Atty. Marcelino Cabucana, Jr. to submit his Answer to the complaint. [7]

In his Answer, respondent averred: He never appeared and represented complainant in Civil Case No. 1-567 since it was his brother, Atty. Edmar Cabucana who appeared and represented Gonzales in said case. He admitted that he is representing Sheriff Gatcheco and his wife in the cases filed against them but claimed that his appearance is *pro bono* and that the spouses pleaded with him as no other counsel was willing to take their case. He entered his appearance in good faith and opted to

represent the spouses rather than leave them defenseless. When the Gatchecos asked for his assistance, the spouses said that the cases filed against them by Gonzales were merely instigated by a high ranking official who wanted to get even with them for their refusal to testify in favor of the said official in another case. At first, respondent declined to serve as counsel of the spouses as he too did not want to incur the ire of the high-ranking official, but after realizing that he would be abdicating a sworn duty to delay no man for money or malice, respondent entered his appearance as defense counsel of the spouses free of any charge. Not long after, the present complaint was crafted against respondent which shows that respondent is now the subject of a "demolition job." The civil case filed by Gonzales where respondent's brother served as counsel is different and distinct from the criminal cases filed by complainant against the Gatcheco spouses, thus, he did not violate any canon on legal ethics. [8]

Gonzales filed a Reply contending that the civil case handled by respondent's brother is closely connected with the cases of the Gatchecos which the respondent is handling; that the claim of respondent that he is handling the cases of the spouses *pro bono* is not true since he has his own agenda in offering his services to the spouses; and that the allegation that she is filing the cases against the spouses because she is being used by a powerful person is not true since she filed the said cases out of her own free will. [9]

The Commission on Bar Discipline of the IBP sent to the parties a Notice of Mandatory Conference dated March 1, 2004. [10] On the scheduled conference, only a representative of complainant appeared. [11] Commissioner Demaree Raval of the IBP-CBD then directed both parties to file their respective verified position papers. [12]

Complainant filed a Memorandum reiterating her earlier assertions and added that respondent prepared and notarized counter-affidavits of the Gatcheco spouses; that the high-ranking official referred to by respondent is Judge Ruben Plata and the accusations of respondent against the said judge is an attack against a brother in the profession which is a violation of the CPR; and that respondent continues to use the name of De Guzman in their law firm despite the fact that said partner has already been appointed as Assistant Prosecutor of Santiago City, again in violation of the CPR. [13]

Respondent filed his Position Paper restating his allegations in his Answer. [14]

On August 23, 2004, Commissioner Wilfredo E.J.E. Reyes issued an Order notifying both parties to appear before his office on October 28, 2004 for a clarificatory question regarding said case. [15] On the said date, only respondent appeared [16] presenting a sworn affidavit executed by Gonzales withdrawing her complaint against respondent. It reads:

SINUMPAANG SALAYSAY  
TUNGKOL SA PAG-UURONG NG DEMANDA

*Ako, si LETICIA GONZALES, nasa tamang edad, Pilipino, may asawa, at nakatira sa Barangay Dubinan East, Santiago City, makaraang manumpa ayon sa batas ay nagsasabing:*

*Ako ang nagdedemanda o petitioner sa CBD Case No. 04-1186 na may pamagat na "Leticia Gonzales vs. Atty. Marcelino C. Cabucana, Jr." na kasalukuyang nahaharap sa Commission on Bar Discipline ng Integrated Bar of the Philippines*

*Ang pagkakahain ng naturang demanda ay nag-ugat sa di-pagkakaintindihan na namamagitan sa akin at nina Mr. and Mrs. Romeo and Anita Gatcheco.*

*Dahil sa aking galit sa naturang mag-asawa, idinawit ko si Atty. Marcelino C. Cabucana, Jr. sa sigalot na namamagitan sa akin at sa mag-asawang Gatcheco, gayong nalalaman ko na si Atty. Marcelino C. Cabucana ay walang nalalaman sa naturang di pagkakaintindihan.*

*Makaraang pag-isipang mabuti ang paghain ko ng demanda kontra kay Atty. Marcelino C. Cabucana, Jr., nakumbinsi ako na ang pagdedemanda ko kay Atty. Marcelino C. Cabucana, Jr. ay isang malaking pagkakamali dahil siya ay walang kinalalaman (sic) sa di pagkakaintindihan naming(sic) ng mag-asawang Gatcheco.*

*Si Atty. Marcelino C. Cabucana, Jr. ay di ko rin naging abogado sa Civil Case No. 1-567 (MTCC Br. I Santiago City) na inihain ko kontra kay Eduardo Mangano.*

*Nais kong ituwid ang lahat kung kaya't aking iniuurong ang naturang kasong inihain ko kontra kay Atty. Marcelino C. Cabucana, Jr. at dahil dito ay hindi na ako interesado pang ituloy and naturang kaso, at aking hinihiling sa kinauukulan na dismisin na ang naturang kaso.*

*Ginawa ko ang sinumpaang salaysay na ito upang patotohanan sa lahat ng nakasaad dito. [17]*

Commissioner Reyes issued an Order dated October 28, 2004 requiring Gonzales to appear before him on November 25, 2004, to affirm her statements and to be subject to clarificatory questioning. [18] However, none of the parties appeared. [19] On February 17, 2005, only respondent was present. Commissioner Reyes then considered the case as submitted for resolution. [20]

On February 24, 2005, Commissioner Reyes submitted his Report and Recommendation, portions of which are quoted hereunder:

The Undersigned Commissioner believes that the respondent made a mistake in the acceptance of the administrative case of Romeo Gatcheco, however, the Commission (sic) believes that there was no malice and bad faith in the said acceptance and this can be shown by the move of the complainant to unilaterally withdraw the case which she filed against Atty. Marcelino C. Cabucana, Jr. However, Atty. Cabucana is reminded to be more careful in the acceptance of cases as conflict of interests might arise.

It is respectfully recommended that Atty. Marcelino C. Cabucana, Jr. (be)

sternly warned and reprimanded and...advised to be more circumspect and careful in accepting cases which might result in conflict of interests.

[21]

On June 25, 2005, a Resolution was passed by the Board of Governors of the IBP, to wit:

RESOLUTION NO. XVI-2005-153

CBD CASE NO. 03-1186

Leticia Gonzales vs.

Atty. Marcelino Cabucana, Jr.

*RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering that respondent made (a) mistake in the acceptance of the administrative case of Romeo Gatcheco, Atty. Marcelino Cabucana, Jr. is hereby WARNED and REPRIMANDED and advised to be more circumspect and careful in accepting cases which might result in conflict of interests.* [22]

Before going to the merits, let it be clarified that contrary to the report of Commissioner Reyes, respondent did not only represent the Gatcheco spouses in the administrative case filed by Gonzales against them. As respondent himself narrated in his Position Paper, he likewise acted as their counsel in the criminal cases filed by Gonzales against them. [23]

With that settled, we find respondent guilty of violating Rule 15.03 of Canon 15 of the Code of Professional Responsibility, to wit:

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

It is well-settled that a lawyer is barred from representing conflicting interests except by written consent of all concerned given after a full disclosure of the facts.

[24] Such prohibition is founded on principles of public policy and good taste as the nature of the lawyer-client relations is one of trust and confidence of the highest degree. [25] Lawyers are expected not only to keep inviolate the client's confidence, but also to avoid the appearance of treachery and double-dealing for only then can litigants be encouraged to entrust their secrets to their lawyers, which is of paramount importance in the administration of justice. [26]

One of the tests of inconsistency of interests is whether the acceptance of a new relation would prevent the full discharge of the 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. [27]

As we expounded in the recent case of Quiambao vs. Bamba, [28]