

## EN BANC

**[ A.C. NO. 6160, March 30, 2006 ]**

**NESTOR PEREZ, COMPLAINANT, VS. ATTY. DANILO DE LA TORRE,  
RESPONDENT**

### DECISION

**YNARES-SANTIAGO, J.:**

In a letter-complaint<sup>[1]</sup> dated July 30, 2003 addressed to then Chief Justice Hilario G. Davide, Jr., complainant Nestor Perez charged respondent Atty. Danilo de la Torre with misconduct or conduct unbecoming of a lawyer for representing conflicting interests.

Perez alleged that he is the barangay captain of Binanuaanan, Calabanga, Camarines Sur; that in December 2001, several suspects for murder and kidnapping for ransom, among them Sonny Boy Ilo and Diego Avila, were apprehended and jailed by the police authorities; that respondent went to the municipal building of Calabanga where Ilo and Avila were being detained and made representations that he could secure their freedom if they sign the prepared extrajudicial confessions; that unknown to the two accused, respondent was representing the heirs of the murder victim; that on the strength of the extrajudicial confessions, cases were filed against them, including herein complainant who was implicated in the extrajudicial confessions as the mastermind in the criminal activities for which they were being charged.

Respondent denied the accusations against him. He explained that while being detained at the Calabanga Municipal Police Jail, Avila sought his assistance in drafting an extrajudicial confession regarding his involvement in the crimes of kidnapping for ransom, murder and robbery. He advised Avila to inform his parents about his decision to make an extrajudicial confession, apprised him of his constitutional rights and of the possibility that he might be utilized as a state-witness.

Respondent claimed that when Ilo sought his assistance in executing his extrajudicial confession, he conferred with Ilo in the presence of his parents; and only after he was convinced that Ilo was not under undue compulsion did he assist the accused in executing the extrajudicial confession.

The complaint was referred to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.<sup>[2]</sup> On August 16, 2005, the Investigating Commissioner submitted his report with the following recommendation:

WHEREFORE, it is respectfully recommended that Atty. Danilo de la Torre be suspended for one (1) year from the practice of the legal profession for

violation of Rule 15.03 of the Code of Professional Responsibility.

RESPECTFULLY SUBMITTED.

The Board of Governors of the IBP modified the recommendation by increasing the period of suspension to two years.

In finding the respondent guilty of representing conflicting interests, the Investigating Commissioner opined that:

In administrative proceedings, the complainant has the burden of proving, by substantial evidence, the allegations in his complaint. The complainant was able to prove by substantial evidence his charge against Atty. de la Tor[r]e. The respondent admitted that his services as a lawyer were retained by both Avila and Ilo. Perez was able to show that at the time that Atty. de la Torre was representing the said two accused, he was also representing the interest of the victim's family. This was declared by the victim's daughter, Vicky de Chavez, who testified before Branch 63 of the Regional Trial Court of Camarines Sur that her family retained the services of Atty. Danilo de la Torre to prosecute the case against her father's killers. She even admitted that she was present when Atty. de la Torre met with and advised Avila and Ilo on one occasion. This is proof that the respondent consciously offered his services to Avila and Ilo despite the fact that he was already representing the family of the two accused's victim. It may not even be improbable that respondent purposely offered to help the accused in order to further his other clients' interest. The respondent failed to deny these facts or offer competent evidence to refute the said facts despite the ample opportunity given him.

Under Rule 15.03 of the Code of Professional Responsibility, a lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts. Respondent is therefore duty bound to refrain from representing two parties having conflicting interests in a controversy. By doing precisely the foregoing, and without any proof that he secured the written consent of both parties after explaining to them the existing conflict of interest, respondent should be sanctioned.

We agree with the findings of the IBP except for the recommended penalty.

There is conflict of interests 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.<sup>[3]</sup>

There is a representation of conflicting interests if the acceptance of the new retainer will require the attorney to do anything 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.<sup>[4]</sup>