

## SECOND DIVISION

[ A.C. NO. 5128, March 31, 2005 ]

**ELESIO<sup>[1]</sup> C. PORMENTO, SR., COMPLAINANT, VS. ATTY. ALIAS  
A. PONTEVEDRA, RESPONDENT.**

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

**AUSTRIA-MARTINEZ, J.:**

In a verified Complaint<sup>[2]</sup> dated August 7, 1999, Elesio C. Pormento, Sr. charged Atty. Elias A. Pontevedra with malpractice and misconduct, praying that on the basis of the facts alleged therein, respondent be disbarred.

Complainant alleges that between 1964 and 1994, respondent is his family's legal counsel having represented him and members of his family in all legal proceedings in which they are involved. Complainant also claims that his family's relationship with respondent extends beyond mere lawyer-client relations as they gave respondent moral, spiritual, physical and financial support in his different endeavors.

<sup>[3]</sup>

Based on the allegations in the complaint, the rift between complainant and respondent began when complainant's counterclaim in Civil Case No. 1648 filed with the Regional Trial Court of Bacolod City was dismissed. Complainant claims that respondent, who was his lawyer in the said case, deliberately failed to inform him of the dismissal of his counterclaim despite receipt of the order of dismissal by the trial court, as a result of which, complainant was deprived of his right to appeal said order. Complainant asserts that he only came to know of the existence of the trial court's order when the adverse party in the said case extrajudicially foreclosed the mortgage executed over the parcel of land which is the subject matter of the suit. In order to recover his ownership over the said parcel of land, complainant was constrained to hire a new lawyer as Atty. Pontevedra refused to institute an action for the recovery of the subject property.<sup>[4]</sup>

Complainant also claims that in order to further protect his rights and interests over the said parcel of land, he was forced to initiate a criminal case for qualified theft against the relatives of the alleged new owner of the said land. Respondent is the counsel of the accused in said case. Complainant claims that as part of his defense in said criminal case, respondent utilized pieces of confidential information he obtained from complainant while the latter is still his client.<sup>[5]</sup>

In a separate incident, complainant claims that in 1967, he bought a parcel of land located at Escalante, Negros Occidental. The Deed of Declaration of Heirship and Sale of said land was prepared and notarized by respondent. Since there was another person who claims ownership of the property, complainant alleges that he heeded respondent's advice to build a small house on the property and to allow his

(complainant's) nephew and his family to occupy the house in order for complainant to establish his possession of the said property. Subsequently, complainant's nephew refused to vacate the property prompting the former to file an ejectment case with the Municipal Trial Court of Escalante, Negros Occidental, docketed as Civil Case No. 528. Respondent acted as the counsel of complainant's nephew.<sup>[6]</sup>

Complainant contends that respondent is guilty of malpractice and misconduct by representing clients with conflicting interests and should be disbarred by reason thereof.<sup>[7]</sup>

In his Comment,<sup>[8]</sup> respondent contends that he was never a direct recipient of any monetary support coming from the complainant. Respondent denies complainant's allegation that he (respondent) did not inform complainant of the trial court's order dismissing the latter's counterclaim in Civil Case No. 1648. Respondent claims that within two days upon his receipt of the trial court's order of dismissal, he delivered to complainant a copy of the said order, apprising him of its contents. As to his representation of the persons against whom complainant filed criminal cases for theft,<sup>[9]</sup> respondent argues that he honestly believes that there exists no conflict between his present and former clients' interests as the cases he handled for these clients are separate and distinct from each other. He further contends that he took up the cause of the accused in the criminal cases filed by complainant for humanitarian considerations since said accused are poor and needy and because there is a dearth of lawyers in their community. With respect to the case for ejectment filed by complainant against his nephew, respondent admits that it was he who notarized the deed of sale of the parcel of land sold to complainant. However, he contends that what is being contested in the said case is not the ownership of the subject land but the ownership of the house built on the said land.<sup>[10]</sup>

On December 21, 1999, complainant filed a Reply to respondent's Comment.<sup>[11]</sup>

On January 19, 2000, the Court referred the instant case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.<sup>[12]</sup>

On February 18, 2002, respondent filed a Rejoinder to complainant's Reply adding that the instant complaint was orchestrated by complainant's son who wanted political vengeance because he lost the vice-mayoralty post to respondent during the 1988 local elections.<sup>[13]</sup>

On February 20, 2002, complainant filed a Sur-Rejoinder to respondent's Rejoinder.<sup>[14]</sup>

Thereafter, the parties filed their respective Position Papers,<sup>[15]</sup> after which the case was deemed submitted for resolution.

In his Report and Recommendation dated February 20, 2004, Investigating Commissioner Agustinus V. Gonzaga found respondent guilty of violating Rule 15.03, Canon 15 of the Code of Professional Responsibility. He recommended that respondent be meted the penalty of suspension for one month.

In a minute Resolution passed on July 30, 2004, the IBP Board of Governors resolved to annul and set aside the recommendation of the Investigating Commissioner and instead approved the dismissal of the complaint for lack of merit, to wit:

**RESOLUTION NO. XVI-2004-387**

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RESOLVED to ANNUL and SET ASIDED [sic], as it is hereby ANNULED and SET ASIDE, the Recommendation of the Investigating Commission, and to APPROVE the **DISMISSAL** of the above-entitled case for lack of merit of the complaint.

We do not agree with the dismissal of the complaint.

At the outset, we reiterate the settled rule that in complaints for disbarment, a formal investigation is a mandatory requirement which may not be dispensed with except for valid and compelling reasons.<sup>[16]</sup> Formal investigations entail notice and hearing. However, the requirements of notice and hearing in administrative cases do not necessarily connote full adversarial proceedings, as actual adversarial proceedings become necessary only for clarification or when there is a need to propound searching questions to witnesses who give vague testimonies.<sup>[17]</sup> Due process is fulfilled when the parties were given reasonable opportunity to be heard and to submit evidence in support of their arguments.<sup>[18]</sup>

From the records extant in the present case, it appears that the Investigating Commissioner conducted a hearing on January 16, 2002 where it was agreed that the complainant and the respondent shall file their respective position papers, after which the case shall be deemed submitted for resolution.<sup>[19]</sup> No further hearings were conducted.

It is also disturbing to note that the abovementioned Resolution of the IBP Board of Governors, annulling and setting aside the recommendation of the Investigating Commissioner, is bereft of any findings of facts or explanation as to how and why it resolved to set aside the recommendation of the Investigating Commissioner and instead dismissed the complaint against respondent.

Section 12(a), Rule 139-B of the Rules of Court provides:

*SEC. 12. Review and decision by the Board of Governors. –*

(a) Every case heard by an investigator shall be reviewed by the IBP Board of Governors upon the record and evidence transmitted to it by the Investigator with his report. **The decision of the Board upon such review shall be in writing and shall clearly and distinctly state the facts and the reasons on which it is based.** It shall be promulgated within a period not exceeding thirty (30) days from the next meeting of the Board following the submittal of the Investigator's report. (Emphasis supplied)

In *Cruz vs. Cabrera*,<sup>[20]</sup> we reiterated the importance of the requirement that the decision of the IBP Board of Governors must state the facts and the reasons on which such decision is based, which is akin to what is required of the decisions of courts of record. We held therein that:

[A]side from informing the parties the reason for the decision to enable them to point out to the appellate court the findings with which they are not in agreement, in case any of them decides to appeal the decision, it is also an assurance that the judge, or the Board of Governors in this case, reached his judgment through the process of legal reasoning.

Noncompliance with this requirement would normally result in the remand of the case.<sup>[21]</sup>

Moreover, while we may consider the act of the IBP Board of Governors in simply adopting the report of the Investigating Commissioner as substantial compliance with said Rule, in this case, we cannot countenance the act of the IBP Board of Governors in merely stating that it is annulling the Commissioner's recommendation and then dismiss the complaint without stating the facts and the reasons for said dismissal.

However, considering that the present controversy has been pending resolution for quite some time, that no further factual determination is required, and the issues being raised may be determined on the basis of the numerous pleadings filed together with the annexes attached thereto, we resolve to proceed and decide the case on the basis of the extensive pleadings on record, in the interest of justice and speedy disposition of the case.<sup>[22]</sup>

Coming to the main issue in the present case, respondent is being accused of malpractice and misconduct on three grounds: first, for representing interests which conflict with those of his former client, herein complainant; second, for taking advantage of the information and knowledge that he obtained from complainant; and, third, for not notifying complainant of the dismissal of his counterclaim in Civil Case No. 1648.

We shall concurrently discuss the first and second grounds as they are interrelated.

Rule 15.03, Canon 15 of the Code of Professional Responsibility provides:

"A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts."

Corollary to this, Canon 21 of the same Code enjoins a lawyer to preserve the confidences and secrets of his clients even after the attorney-client relation is terminated. Rule 21.02, Canon 21 specifically requires that:

A lawyer shall not, to the disadvantage of his client, use information acquired in the course of employment, nor shall he use the same to his own advantage or that of a third person, unless the client with full knowledge of the circumstances consents thereto.

In addition, Canon 6 of the Canons of Professional Ethics states:

It is the duty of a lawyer at the time of retainer to disclose to the client all the circumstances of his relations to the parties and any interest in or connection with the controversy, which might influence the client in the selection of counsel.

It is unprofessional to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts. Within the meaning of this canon, a lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose.

The obligation to represent the client with undivided fidelity and not to divulge his secrets or confidences forbids also the subsequent acceptance of retainers or employment from others in matters adversely affecting any interest of the client with respect to which confidence has been reposed.

Jurisprudence instructs that 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>[23]</sup> Another test to determine if there is a representation of conflicting interests is whether the acceptance of a new relation will prevent an attorney from the full discharge of his duty of undivided fidelity and loyalty to his client or invite suspicion of unfaithfulness or double dealing in the performance thereof.<sup>[24]</sup>

A lawyer is forbidden from representing a subsequent client against a former client when the subject matter of the present controversy is related, directly or indirectly, to the subject matter of the previous litigation in which he appeared for the former client.<sup>[25]</sup> Conversely, he may properly act as counsel for a new client, with full disclosure to the latter, against a former client in a matter wholly unrelated to that of the previous employment, there being in that instance no conflict of interests.<sup>[26]</sup> Where, however, the subject matter of the present suit between the lawyer's new client and his former client is in some way connected with that of the former client's action, the lawyer may have to contend for his new client that which he previously opposed as counsel for the former client or to use against the latter information confided to him as his counsel.<sup>[27]</sup> As we have held in *Maturan vs. Gonzales*:<sup>[28]</sup>

The reason for the prohibition is found in the relation of attorney and client, which is one of trust and confidence of the highest degree. A lawyer becomes familiar with all the facts connected with his client's case. He learns from his client the weak points of the action as well as the strong ones. Such knowledge must be considered sacred and guarded with care. No opportunity must be given him to take advantage of the client's secrets. A lawyer must have the fullest confidence of his client. For if the confidence is abused, the profession will suffer by the loss thereof.<sup>[29]</sup>

The proscription against representation of conflicting interests finds application where the conflicting interests arise with respect to the same general matter and is