

EN BANC

[B.M. No. 793, July 30, 2004]

IN RE: SUSPENSION FROM THE PRACTICE OF LAW IN THE TERRITORY OF GUAM OF ATTY. LEON G. MAQUERA

R E S O L U T I O N

TINGA, J.:

May a member of the Philippine Bar who was disbarred or suspended from the practice of law in a foreign jurisdiction where he has also been admitted as an attorney be meted the same sanction as a member of the Philippine Bar for the same infraction committed in the foreign jurisdiction? There is a Rule of Court provision covering this case's central issue. Up to this juncture, its reach and breadth have not undergone the test of an unsettled case.

In a *Letter* dated August 20, 1996,^[1] the District Court of Guam informed this Court of the suspension of Atty. Leon G. Maquera (Maquera) from the practice of law in Guam for two (2) years pursuant to the *Decision* rendered by the Superior Court of Guam on May 7, 1996 in Special Proceedings Case No. SP0075-94,^[2] a disciplinary case filed by the Guam Bar Ethics Committee against Maquera.

The Court referred the matter of Maquera's suspension in Guam to the Bar Confidant for comment in its *Resolution* dated November 19, 1996.^[3] Under Section 27, Rule 138 of the Revised Rules of Court, the disbarment or suspension of a member of the Philippine Bar in a foreign jurisdiction, where he has also been admitted as an attorney, is also a ground for his disbarment or suspension in this realm, provided the foreign court's action is by reason of an act or omission constituting deceit, malpractice or other gross misconduct, grossly immoral conduct, or a violation of the lawyer's oath.

In a *Memorandum* dated February 20, 1997, then Bar Confidant Atty. Erlinda C. Verzosa recommended that the Court obtain copies of the record of Maquera's case since the documents transmitted by the Guam District Court do not contain the factual and legal bases for Maquera's suspension and are thus insufficient to enable her to determine whether Maquera's acts or omissions which resulted in his suspension in Guam are likewise violative of his oath as a member of the Philippine Bar.^[4]

Pursuant to this Court's directive in its *Resolution* dated March 18, 1997,^[5] the Bar Confidant sent a letter dated November 13, 1997 to the District Court of Guam requesting for certified copies of the record of the disciplinary case against Maquera and of the rules violated by him.^[6]

The Court received certified copies of the record of Maquera's case from the District

Court of Guam on December 8, 1997.^[7]

Thereafter, Maquera's case was referred by the Court to the Integrated Bar of the Philippines (IBP) for investigation report and recommendation within sixty (60) days from the IBP's receipt of the case records.^[8]

The IBP sent Maquera a *Notice of Hearing* requiring him to appear before the IBP's Commission on Bar Discipline on July 28, 1998.^[9] However, the notice was returned unserved because Maquera had already moved from his last known address in Agana, Guam and did not leave any forwarding address.^[10]

On October 9, 2003, the IBP submitted to the Court its *Report and Recommendation* and its *Resolution No. XVI-2003-110*, indefinitely suspending Maquera from the practice of law within the Philippines until and unless he updates and pays his IBP membership dues in full.^[11]

The IBP found that Maquera was admitted to the Philippine Bar on February 28, 1958. On October 18, 1974, he was admitted to the practice of law in the territory of Guam. He was suspended from the practice of law in Guam for misconduct, as he acquired his client's property as payment for his legal services, then sold it and as a consequence obtained an unreasonably high fee for handling his client's case.^[12]

In its *Decision*, the Superior Court of Guam stated that on August 6, 1987, Edward Benavente, the creditor of a certain Castro, obtained a judgment against Castro in a civil case. Maquera served as Castro's counsel in said case. Castro's property subject of the case, a parcel of land, was to be sold at a public auction in satisfaction of his obligation to Benavente. Castro, however, retained the right of redemption over the property for one year. The right of redemption could be exercised by paying the amount of the judgment debt within the aforesaid period.^[13]

At the auction sale, Benavente purchased Castro's property for Five Hundred U.S. Dollars (US\$500.00), the amount which Castro was adjudged to pay him.^[14]

On December 21, 1987, Castro, in consideration of Maquera's legal services in the civil case involving Benavente, entered into an oral agreement with Maquera and assigned his right of redemption in favor of the latter.^[15]

On January 8, 1988, Maquera exercised Castro's right of redemption by paying Benavente US\$525.00 in satisfaction of the judgment debt. Thereafter, Maquera had the title to the property transferred in his name.^[16]

On December 31, 1988, Maquera sold the property to C.S. Chang and C.C. Chang for Three Hundred Twenty Thousand U.S. Dollars (US\$320,000.00).^[17]

On January 15, 1994, the Guam Bar Ethics Committee (Committee) conducted hearings regarding Maquera's alleged misconduct.^[18]

Subsequently, the Committee filed a Petition in the Superior Court of Guam praying

that Maquera be sanctioned for violations of Rules 1.5^[19] and 1.8(a)^[20] of the Model Rules of Professional Conduct (Model Rules) in force in Guam. In its Petition, the Committee claimed that Maquera obtained an unreasonably high fee for his services. The Committee further alleged that Maquera himself admitted his failure to comply with the requirement in Rule 1.8 (a) of the Model Rules that a lawyer shall not enter into a business transaction with a client or knowingly acquire a pecuniary interest adverse to a client unless the transaction and the terms governing the lawyer's acquisition of such interest are fair and reasonable to the client, and are fully disclosed to, and understood by the client and reduced in writing.^[21]

The Committee recommended that Maquera be: (1) suspended from the practice of law in Guam for a period of two ^[2] years, however, with all but thirty (30) days of the period of suspension deferred; (2) ordered to return to Castro the difference between the sale price of the property to the Changs and the amount due him for legal services rendered to Castro; (3) required to pay the costs of the disciplinary proceedings; and (4) publicly reprimanded. It also recommended that other jurisdictions be informed that Maquera has been subject to disciplinary action by the Superior Court of Guam.^[22]

Maquera did not deny that Castro executed a quitclaim deed to the property in his favor as compensation for past legal services and that the transaction, except for the deed itself, was oral and was not made pursuant to a prior written agreement.

However, he contended that the transaction was made three days following the alleged termination of the attorney-client relationship between them, and that the property did not constitute an exorbitant fee for his legal services to Castro.^[23]

On May 7, 1996, the Superior Court of Guam rendered its *Decision*^[24] suspending Maquera from the practice of law in Guam for a period of two (2) years and ordering him to take the Multi-State Professional Responsibility Examination (MPRE) within that period. The court found that the attorney-client relationship between Maquera and Castro was not yet completely terminated when they entered into the oral agreement to transfer Castro's right of redemption to Maquera on December 21, 1987. It also held that Maquera profited too much from the eventual transfer of Castro's property to him since he was able to sell the same to the Changs with more than US\$200,000.00 in profit, whereas his legal fees for services rendered to Castro amounted only to US\$45,000.00. The court also ordered him to take the MPRE upon his admission during the hearings of his case that he was aware of the requirements of the Model Rules regarding business transactions between an attorney and his client "in a very general sort of way."^[25]

On the basis of the *Decision* of the Superior Court of Guam, the IBP concluded that although the said court found Maquera liable for misconduct, "there is no evidence to establish that [Maquera] committed a breach of ethics in the Philippines."^[26] However, the IBP still resolved to suspend him indefinitely for his failure to pay his annual dues as a member of the IBP since 1977, which failure is, in turn, a ground for removal of the name of the delinquent member from the Roll of Attorneys under Section 10, Rule 139-A of the Revised Rules of Court.^[27]

The power of the Court to disbar or suspend a lawyer for acts or omissions committed in a foreign jurisdiction is found in Section 27, Rule 138 of the Revised

Rules of Court, as amended by Supreme Court *Resolution* dated February 13, 1992, which states:

Section 27. *Disbarment or suspension of attorneys by Supreme Court, grounds therefor.*—A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for **any deceit, malpractice, or other gross misconduct in such office**, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for **any violation of the oath which he is required to take before admission to practice**, or for a willful disobedience appearing as attorney for a party to a case without authority to do so. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.

The disbarment or suspension of a member of the Philippine Bar by a competent court or other disciplinary agency in a foreign jurisdiction where he has also been admitted as an attorney is a ground for his disbarment or suspension if the basis of such action includes any of the acts hereinabove enumerated.

The judgment, resolution or order of the foreign court or disciplinary agency shall be prima facie evidence of the ground for disbarment or suspension (Emphasis supplied).

The Court must therefore determine whether Maquera's acts, namely: acquiring by assignment Castro's right of redemption over the property subject of the civil case where Maquera appeared as counsel for him; exercising the right of redemption; and, subsequently selling the property for a huge profit, violate Philippine law or the standards of ethical behavior for members of the Philippine Bar and thus constitute grounds for his suspension or disbarment in this jurisdiction.

The Superior Court of Guam found that Maquera acquired his client's property by exercising the right of redemption previously assigned to him by the client in payment of his legal services. Such transaction falls squarely under Article 1492 in relation to Article 1491, paragraph 5 of the Civil Code of the Philippines. Paragraph 5 of Article 1491^[28] prohibits the lawyer's acquisition by assignment of the client's property which is the subject of the litigation handled by the lawyer. Under Article 1492,^[29] the prohibition extends to sales in legal redemption.

The prohibition ordained in paragraph 5 of Article 1491 and Article 1492 is founded on public policy because, by virtue of his office, an attorney may easily take advantage of the credulity and ignorance of his client^[30] and unduly enrich himself at the expense of his client.

The case of *In re: Ruste*^[31] illustrates the significance of the aforementioned prohibition. In that case, the attorney acquired his clients' property subject of a case where he was acting as counsel pursuant to a deed of sale executed by his clients in his favor. He contended that the sale was made at the instance of his clients because they had no money to pay him for his services. The Court ruled that the lawyer's acquisition of the property of his clients under the circumstances obtaining therein rendered him liable for malpractice. The Court held:

...Whether the deed of sale in question was executed at the instance of the spouses driven by financial necessity, as contended by the respondent, or at the latter's behest, as contended by the complainant, is of no moment. In either case an attorney occupies a vantage position to press upon or dictate his terms to a harassed client, in breach of the "rule so amply protective of the confidential relations, which must necessarily exist between attorney and client, and of the rights of both".

[32]

The Superior Court of Guam also hinted that Maquera's acquisition of Castro's right of redemption, his subsequent exercise of said right, and his act of selling the redeemed property for huge profits were tainted with deceit and bad faith when it concluded that Maquera charged Castro an exorbitant fee for his legal services. The court held that since the assignment of the right of redemption to Maquera was in payment for his legal services, and since the property redeemed by him had a market value of US\$248,220.00 as of December 21, 1987 (the date when the right of redemption was assigned to him), he is liable for misconduct for accepting payment for his legal services way beyond his actual fees which amounted only to US\$45,000.00.

Maquera's acts in Guam which resulted in his two (2)-year suspension from the practice of law in that jurisdiction are also valid grounds for his suspension from the practice of law in the Philippines. Such acts are violative of a lawyer's sworn duty to act with fidelity toward his clients. They are also violative of the Code of Professional Responsibility, specifically, Canon 17 which states that "[a] lawyer owes fidelity to the cause of his client and shall be mindful the trust and confidence reposed in him;" and Rule 1.01 which prohibits lawyers from engaging in unlawful, dishonest, immoral or deceitful conduct. The requirement of good moral character is not only a condition precedent to admission to the Philippine Bar but is also a continuing requirement to maintain one's good's standing in the legal profession.[33]

It bears stressing that the Guam Superior Court's judgment ordering Maquera's suspension from the practice of law in Guam does not automatically result in his suspension or disbarment in the Philippines. Under Section 27,[34] Rule 138 of the Revised Rules of Court, the acts which led to his suspension in Guam are mere grounds for disbarment or suspension in this jurisdiction, at that only if the basis of the foreign court's action includes any of the grounds for disbarment or suspension in this jurisdiction.[35] Likewise, the judgment of the Superior Court of Guam only constitutes *prima facie* evidence of Maquera's unethical acts as a lawyer.[36] More fundamentally, due process demands that he be given the opportunity to defend himself and to present testimonial and documentary evidence on the matter in an investigation to be conducted in accordance with Rule 139-B of the Revised Rules of Court. Said rule mandates that a respondent lawyer must in all cases be notified of the charges against him. It is only after reasonable notice and failure on the part of the respondent lawyer to appear during the scheduled investigation that an investigation may be conducted *ex parte*. [37]

The Court notes that Maquera has not yet been able to adduce evidence on his behalf regarding the charges of unethical behavior in Guam against him, as it is not certain that he did receive the *Notice of Hearing* earlier sent by the IBP's Commission on Bar Discipline. Thus, there is a need to ascertain Maquera's current