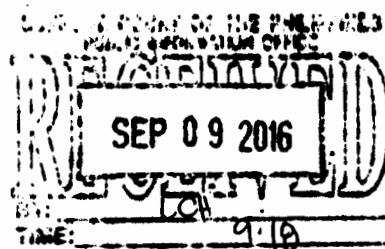




Republic of the Philippines
Supreme Court
 Manila



FIRST DIVISION

NILO B. DIONGZON,
 Petitioner,

A.C. No. 2404

Present:

- versus -

SERENO, *C.J.*,
 LEONARDO-DE CASTRO,
 BERSAMIN,
 PERLAS-BERNABE,
 CAGUIOA, *JJ.*

Promulgated:

• **ATTY. WILLIAM MIRANO.**
 Respondent.

AUG 17 2016

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DECISION

BERSAMIN, J.:

A lawyer who agrees to represent a client's interests in the latter's business dealings is duty-bound to keep the confidence of such client, even after their lawyer-client relationship had ended. If he represents any other party in a case against his former client over a business deal he oversaw during the time of their professional relationship, he is guilty of representing conflicting interests, and should be properly sanctioned for ethical misconduct.

The Case

Before the Court is the petition for review of the Resolution No. XX-2013-160 adopted by the Board of Governors of the Integrated Bar of the Philippines (IBP) on the complaint for disbarment filed by the complainant against respondent Atty. William Mirano,¹ whereby the IBP Board of Governors found the respondent guilty of representing conflicting interest,

¹ Rollo, p. 1590.

and recommended the penalty of suspension from the practice of law for one year. The respondent assails the recommendation of the IBP Board of Governors.

Antecedents

On the dates material to this case, the complainant was a businessman engaged in the fishing industry in Bacolod City, Negros Occidental. In 1979, he retained the respondent as his legal counsel to represent him as the plaintiff in Civil Case No. 10679 then pending in the City Court of Bacolod City (Branch 1). In November 1981, the complainant again retained the respondent as his lawyer in relation to the execution of two deeds of sale covering the boats the former was selling to Spouses Almanzur and Milagros Gonzales (Gonzaleses).² In January 1982, the parties herein signed a retainer contract for legal services that covered legal representation in cases and transactions involving the fishing business of the complainant.³

In February 1982, the Gonzaleses sued the complainant for replevin and damages, and sought the annulment of the aforementioned deeds of sale.⁴ They were represented by Atty. Romeo Flora, the associate of the respondent in his law office. It appears that the bond they filed to justify the manual delivery of the boats subject of the suit had been notarially acknowledged before the respondent without the knowledge and prior consent of the complainant;⁵ and that the respondent eventually entered his appearance as the counsel for the Gonzaleses against the respondent.⁶

On May 24, 1982, therefore, the complainant initiated this administrative complaint for disbarment against the respondent by verified letter-complaint.⁷

The respondent thereafter sought several times the extension of the time for him to file his comment.

In the meantime, Atty. Flora, in an attempt to explain why the respondent had appeared as counsel for the Gonzaleses, filed a manifestation claiming that the Gonzaleses had been his own personal clients, and that he had only requested the respondent's appearance because he had been indisposed at the time.⁸

² Id. at 11-17, (Annexes D and E of the Complaint).

³ Id. at 3.

⁴ Id. at 1592.

⁵ Id. at 19, (Annex G, Complaint).

⁶ Id. at 20, (Annex H of the Complaint).

⁷ Id. at 2-6.

⁸ Id. at 32-34.

The complainant belied the explanation of Atty. Flora, however, and pointed out that Atty. Flora was actually a new lawyer then working in the law office of the respondent.⁹ As proof, the complainant submitted the stationery showing the letterhead of the law office of the respondent that included Atty. Flora's name as an associate.¹⁰

In his answer dated September 9, 1982,¹¹ the respondent stated that the complainant had been his client in a different civil case; that the complainant had never consulted him upon any other legal matter; that the complainant had only presented the deeds of sale prepared by another lawyer because he had not been contented with the terms thereof; that he had not been the complainant's retained counsel because the retainer agreement did not take effect; that he had returned the amount paid to him by the complainant; that he had appeared for the Gonzaleses only after their evidence against the complainant had been presented; that the complainant had approached him when he needed a lawyer to defend him from an *estafa* charge; and that the complainant had even wanted him to falsify documents in relation to that *estafa* case, but because he had refused his bidding, the complainant had then filed this administrative case against him.¹²

Proceedings before the IBP

The complaint was referred to the IBP for investigation. The case was heard over a long period of time spanning 1985 to 2003,¹³ and the IBP Board of Governors finally recommended on February 13, 2013 that the respondent be held guilty of conflict of interest for appearing as the counsel for the opponents of the complainant with whom he had an existing lawyer-client relationship, a gross violation of his ethical duties as an attorney; and that he should be punished with suspension from the practice of law for one year.

The Court noted the resolution of the IBP Board of Governors on April 1, 2014.

The respondent filed in this Court a *Manifestation with Motion* and a *Supplement to Manifestation with Motion*, wherein he proceeded to argue against the findings although he initially claimed not to have been furnished with the IBP Board of Governors' recommendation. He posited that he still had a pending *Motion for Reconsideration* in the IBP, and requested that this case be remanded to the IBP for disposition.

⁹ Id. at 46-51.

¹⁰ Id. at 52.

¹¹ Id. at 65-78.

¹² Id.

¹³ Id. at 347-1587.

Ruling of the Court

We uphold the findings and recommendations of the IBP Board of Governors because they were substantiated by the records.

On the preliminary matter of procedure being raised by the respondent, it is unnecessary to remand this case to the IBP for further investigation and disposition by the IBP. Remanding the case to the IBP would be superfluous and unnecessary. The complaint was filed in 1982, and since then the case underwent three decades of hearings before different investigating commissioners of the IBP. The matters subject of the complaint were extensively covered and sifted. In our view, the records are already adequate for resolution of the charge against the respondent, which, after all, is something that only the Court can ultimately do.

Was the respondent guilty of representing conflict of interest?

The lawyer-client relationship begins from the moment a client seeks the lawyer's advice upon a legal concern. The seeking may be for consultation on transactions or other legal concerns, or for representation of the client in an actual case in the courts or other fora. From that moment on, the lawyer is bound to respect the relationship and to maintain the trust and confidence of his client. No written agreement is necessary to generate a lawyer-client relationship, but in formalizing it, the lawyer may present a retainer agreement to be considered and agreed to by the client. As with all contracts, the agreement must contain all the terms and conditions agreed upon by the parties.

In this case, the respondent presented such a retainer contract to the complainant, the terms of which are stated below:

The CLIENT retains and employs the ATTORNEY to take charge of the legal matters of the former in connection with his fishing business, and the attorney accepts such retainer and employment subject to the following terms and conditions, to wit:

1. That the term of this contract shall be for two "2" years beginning February, 1982 but is deemed automatically renewed for the same period if not terminated by both parties by virtue of an agreement to that effect and signed by them;

2. That the compensation to be paid by the client for the services of the attorney, shall be three hundred pesos (₱300.00) a month;
3. That the attorney may be consulted at all times by CLIENT on all business requiring his professional advice and opinion and when the ATTORNEY gives a written opinion, a copy shall be sent to the CLIENT;
4. That the duties of the attorney in this retainer contract shall include consultations, opinions, legal advices, preparations and drafting of contracts and other legal papers, and other legal works, in connection with the business of the CLIENT, except those cases involving trials in court, which if they are entrusted to the ATTORNEY, shall be subject to a new agreement;¹⁴

Both parties signed their retainer contract on January 20, 1982. Contrary to the assertion of the respondent, the retainer agreement did not contain a suspensive condition that affected its effectivity as of the date of its execution. It simply stipulated that the respondent would represent the interests of the complainant in all matters pertaining to his fishing business, thereby formalizing their lawyer-client relationship. The respondent's insistence that the complainant should return all the checks to the Gonzaleses relative to the sale of the fishing boats was clearly not part of the contract.

The lawyer-client relationship between the parties was duly established beginning in 1979 and lasted until 1982. The respondent's claim that he returned the retainer fee did not alter the juridical existence of their lawyer-client relationship. When the complainant consulted him on the sale of the boats to the Gonzaleses, the respondent reviewed the contracts of sale in the capacity of the complainant's lawyer, and even notarized the same. He became aware of the details of the sale by virtue of the confidentiality generated by his lawyer-client relationship with the complainant.

Canon 15 of the *Code of Professional Responsibility* enjoins lawyers to observe candor, fairness and loyalty in all their dealings and transactions with their clients. Specifically, Canon 15.03 demands that: "*A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts.*" A conflict of interest exists when a lawyer represents inconsistent interests of two opposing parties, like when the lawyer performs an act that will injuriously affect his first client in any matter in which he represented him, or when the lawyer uses any knowledge he previously acquired from his first client against the latter.¹⁵ The prohibition against conflict of interest is founded on principles of public policy and good taste, inasmuch as the lawyer-client relationship is based on

¹⁴ Id. at 9-10, (Annex B of complaint).

¹⁵ *Hornilla v. Salunat*, A.C. 5804, July 1, 2003, 405 SCRA 220, 223.

trust and confidence.¹⁶ A lawyer has a duty to preserve his client's confidence in him, even if their relationship ends. The purpose is to assure freedom of communication between the lawyer and the client in order to enable the former to properly represent and serve the latter's interests. To use against the latter any information the former gains during the relationship is deplorable and unethical.

When he appeared in court for the benefit of the Gonzaleses to try the case against the complainant, the respondent unquestionably incurred a conflict of interest. Having become privy to the terms of the sale subject of the civil case, the conflict of interest became unmitigated because the complainant had not expressly consented in writing to his appearing in behalf of the Gonzaleses. It would have been more prudent for him to have excused himself from representing either party in the civil case.

In cavalier fashion, the respondent has cited his accomplishments as a member and officer of the IBP in his region to buttress his claim of being more credible than the complainant, supposedly a convicted felon. But such a defense is unworthy of consideration in this instance because the praiseworthiness of one's accomplishments and professional reputation never furnishes the license for any ethical lawyer to flagrantly and knowingly violate the *Code of Professional Responsibility*.

On the penalty, we note that suspension from the practice of law for one year was imposed on the lawyer who had appeared as defense counsel for the accused in an *estafa* case despite having written and sent the demand letter for the complainant in the same case.¹⁷ In another case, the same penalty was imposed on the lawyer who had initially drafted a deed of sale for the client, and who eventually filed a case against said client to annul the same contract.¹⁸ Such penalty is appropriate and commensurate for this case.

ACCORDINGLY, the Court **AFFIRMS** the Resolution adopted on February 13, 2013 by the Board of Governors of the Integrated Bar of the Philippines; **FINDS** and **DECLARES** Atty. William N. Mirano guilty of ethical misconduct due to conflict of interest, and, **ACCORDINGLY**, **SUSPENDS** him from the practice of law for **ONE YEAR**, effective immediately upon receipt of this decision.

Let copies of this decision be entered in the personal records of Atty. Mirano in the Office of the Bar Confidant and the Integrated Bar of the

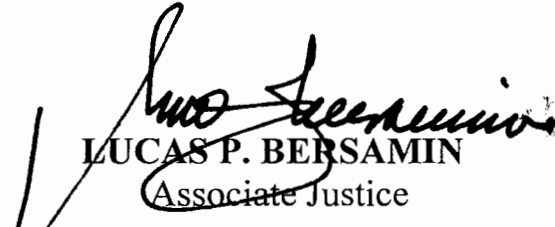
¹⁶ *Hilado v. David*, 84 Phil. 569, 578 (1949).

¹⁷ *Castro-Justo v. Galing*, A.C. 6174, November 16, 2011, 660 SCRA 140, 147.

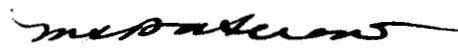
¹⁸ *Aniñon v. Sabitsana, Jr.*, A.C. 5098, April 11, 2012, 669 SCRA 76, 82-83, 86.


Philippines; and a copy of this decision be furnished to the Office of the Court Administrator for dissemination to all courts in the country.

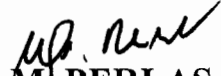
SO ORDERED.

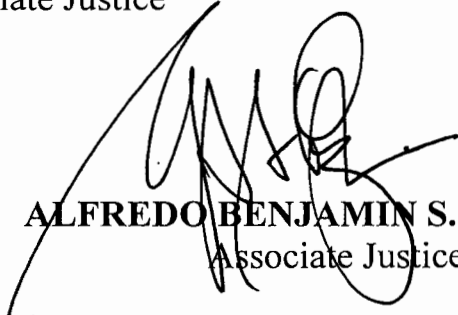

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice


TERESITA J. LEONARDO-DE CASTRO
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice