



Republic of the Philippines
Supreme Court
 Manila

SECOND DIVISION

JOEL A. PILAR,

Complainant,

A.C. No. 12792

Present:

PERLAS-BERNABE, S.A.J.,
Chairperson,
GESMUNDO,
LAZARO-JAVIER,
LOPEZ, and
ROSARIO,*JJ.

-versus-

ATTY. CLARENCE T.
BALLICUD,

Respondent.

Promulgated:

NOV 16 2020

X-----X

R E S O L U T I O N

LOPEZ, J.:

For resolution is a Complaint for Disbarment¹ dated November 10, 2016 filed by Joel A. Pilar (Pilar) charging respondent Atty. Clarence T. Ballicud (Atty. Ballicud) with conflict of interest, in violation of Kalenborn Weartech Philippines' (KWP), trust and confidence by establishing and running a competing company, Engel Anlagen Technik Phils., Inc. (EAT), while still serving as its legal counsel in 2013.

ANTECEDENTS

KWP is a corporation registered with the Securities and Exchange Commission (SEC) on January 3, 2007,² primarily engaged in

* Designated additional Member *per* Special Order No. 2797 dated November 5, 2020.

¹ *Rollo*, Vol. 1 (1), pp. 1-9.

² *Id.* at 13.

manufacturing, distributing, and dealing wear resistant linings, other industrial supplies and related products.³ KWP engaged the services of Atty. Ballicud to draft legal documents, such as policy on retirement benefits, voluntary resignation, and shareholder's agreement, from 2010 to 2013.⁴

After the termination of Atty. Ballicud's engagement, [KWP came across EAT, a company engaged in selling, assembling, and distributing electrical products],⁵ and other merchandise similar to KWP's products. Allegedly, KWP had previously lost several project bids to EAT that resulted in the loss of clients and business opportunities on their part. This prompted KWP to investigate about EAT. KWP found out that EAT was registered with the SEC on March 27, 2013, with Atty. Ballicud as its President and one of the incorporators.⁶ Further investigation revealed that the other incorporators are the nephews of KWP's former President, Dennis M. Gabriel (Dennis),⁷ who resigned in 2014.⁸

Thus, on November 10, 2016, KWP's Vice President for Technical and Sales,⁹ Pilar, filed a disbarment complaint against Atty. Ballicud with the Integrated Bar of the Philippines (IBP) for representing clients with conflicting interests.

Pilar claimed that when Atty. Ballicud served as KWP's legal counsel from 2010 to July 2013, he had ample opportunity and time to study KWP's business operations. Atty. Ballicud then used the confidential information he received as KWP's retained counsel to build EAT and profit at the expense of KWP. Further, Pilar discovered that while Atty. Ballicud was EAT's President and major shareholder,¹⁰ Spouses Dennis and Marianne Gabriel (Spouses Gabriel), KWP's former President and Corporate Secretary, respectively, actually own and operate EAT.¹¹ Spouses Gabriel represented EAT in all its dealings with clients and Atty. Ballicud never participated in the operations nor represented EAT in its affairs.¹² Atty. Ballicud, therefore, acted as Spouses Gabriel's dummy¹³ to circumvent KWP's policy of non-compete and non-pirating.¹⁴ Pilar also discovered that EAT pirated some of KWP's employees.¹⁵ The circumstances show that Atty. Ballicud incorporated EAT and took advantage of his connection with Dennis, used KWP's connections, stole KWP's clients, pirated KWP's employees, and

³ *Id.* at 3.

⁴ *Id.* at 3-4.

⁵ *Rollo*, Vol. II, p. 33.

⁶ *Rollo*, Vol. I (1), p. 5.

⁷ *Rollo*, Vol. II, p. 8.

⁸ *Supra* note 6.

⁹ *Supra* note 1, at 1.

¹⁰ *Rollo*, Vol. I (1), pp. 117-123, EAT's Amended Articles of Incorporation. See also *Rollo*, Vol. II, p. 625.

¹¹ *Rollo*, Vol. II, p. 10.

¹² *Id.* at 625.

¹³ *Id.* at 8.

¹⁴ *Id.* at 15.

¹⁵ *Id.* at 10.



applied KWP's operations for his and Dennis' gain.¹⁶ Thus, Atty. Ballicud violated Rule 1.02, Canon 1; Rule 7.03, Canon 7; Rules 15.03 and 15.07, Canon 15; Rule 19.02, Canon 19; and Rule 21.02, Canon 21 of the Code of Professional Responsibility (CPR).¹⁷

As a defense, Atty. Ballicud insisted that there was no law prohibiting him from setting up a business. EAT started its operation in December 2013, after the termination of his engagement with KWP in March 2013.¹⁸ Further, EAT's primary purpose is different from KWP because EAT is engaged more in retail business than in wholesale business. Atty. Ballicud explained that his duty as KWP's counsel was limited to contracts and documents review; he did not represent KWP in any case. As such, he did not know any confidential information about KWP's operations, and there was no conflict of interest on his part.¹⁹

IBP's Recommendation and Action

On February 20, 2018, the Investigating Commissioner of the Commission on Bar Discipline, IBP,²⁰ found Atty. Ballicud guilty of violating the prohibition against the representation of conflicting interests under Rule 15.03 of the CPR for putting up a corporation in direct competition, at least in the wholesale market, with his existing client. The Investigating Commissioner recommended Atty. Ballicud's suspension from the practice of law for one year, *viz.*:

It is, therefore, respectfully recommended that the respondent be **SUSPENDED** from the practice of the legal profession for a period of one (1) year.²¹

In a Resolution²² dated June 28, 2018, the IBP Board of Governors adopted the factual findings and recommendation of the Investigating Commissioner, thus:

CBD Case No. 16-5163
Joel A. Pilar vs.
Atty. Clarence T. Ballicud

RESOLVED to ADOPT the findings of fact and recommendation of the Investigating Commissioner to impose upon the Respondent the penalty of SUSPENSION FROM THE PRACTICE OF LAW FOR A PERIOD OF ONE (1) YEAR.

¹⁶ *Id.* at 15-16.

¹⁷ *Id.* at 20-21.

¹⁸ Later on, Atty. Ballicud admitted in his position paper that he was KWP's retained counsel up until July 2013; see *rollo*, Vol. I (1), p. 135.

¹⁹ *Rollo*, Vol. I (1), pp. 91-94.

²⁰ *Rollo*, Vol. III (IV), pp. 2-9; Report and Recommendation, penned by Commissioner Jose Alfonso M. Gomos.

²¹ *Id.* at 9.

²² *Id.* at 1.



Atty. Ballicud filed a Motion for Reconsideration²³ dated October 29, 2018, which was denied by the IBP Board of Governors in a Resolution²⁴ on May 27, 2019, as follows:

CBD Case No. 16-5163
Joel Pilar vs.
Atty. Clarence T. Ballicud

*RESOLVED to DENY the Respondent's Motion for Reconsideration there being no new reasons or arguments adduced to justify the reversal of the previous decision of the Board of Governors.*²⁵

Thereafter, the entire records of the case were transmitted to this Court for review.

RULING

We agree with the factual findings of the IBP. However, the Court deems it proper to modify the penalty.

The nature of a lawyer-client relationship is one of trust and confidence of the highest degree.²⁶ Necessity and public interest require that it be so to encourage the client to entrust his case to his lawyer.²⁷ Otherwise, the entire profession will suffer and the administration of justice will be compromised. To preserve this fiduciary relationship and protect the public's trust in the legal system, a lawyer is prohibited from representing conflicting interests under Rule 1.02, Canon 1, in relation to Rule 15.03, Canon 15, of the CPR, thus:

CANON 1 — A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND FOR LEGAL PROCESSES.

Rule 1.02. — A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system.

CANON 15 — A LAWYER SHALL OBSERVE CANDOR, FAIRNESS AND LOYALTY IN ALL HIS DEALINGS AND TRANSACTIONS WITH HIS CLIENTS.

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

²³ *Id.* at 10-16.

²⁴ *Rollo*, Vol. III, p. 31.

²⁵ *Id.*

²⁶ *Perez v. Atty. De la Torre*, 520 Phil. 419, 423-424 (2006), cited in *Samson v. Atty. Era*, 714 Phil. 101, 112 (2013).

²⁷ *Mercado v. Atty. Vitriolo*, 498 Phil. 49, 57 (2005), citing *Regala v. Sandiganbayan*, 330 Phil. 678, 699 (1996), citing Agpalo, Ruben, *Legal Ethics*, 1992 ed., p. 136; and *Hilado v. David*, 84 Phil 569, 579 (1949).

The proscription against representation of conflicting interests applies to situations where opposing parties are represented by the same lawyer in the same, or an unrelated action. It also applies even if a lawyer would not be called upon to contend for one client, or that there would be no occasion to use the confidential information acquired from one client to the other's disadvantage.²⁸ The determining factor is whether acceptance of the new relation will prevent a lawyer from fulfilling his duty of undivided fidelity and loyalty to his client, or invite suspicion of unfaithfulness or double-dealing in the performance of that duty.²⁹

In *Aniñon v. Atty. Sabitsana, Jr.*,³⁰ we identified three tests developed by jurisprudence to determine the existence of conflict of interest. *First*, whether a lawyer is duty-bound to fight for an issue, or claim on behalf of one client and, at the same time, to oppose that claim for the other client. *Second*, whether 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. *Third*, whether the lawyer would be called upon in the new relation to use against a former client any confidential information acquired through their connection or previous employment.

This case falls under the *second* test. Atty. Ballicud caused the registration of EAT with the SEC on March 27, 2013, or before the termination of his services with KWP in July 2013.³¹ Atty. Ballicud occupied the highest position as EAT's President and major stockholder. The primary purpose of EAT is to engage in the business of trading, manufacturing, assembling, selling, purchasing, distributing, servicing, and otherwise dealing in and with industrial supplies, equipment, and other related products and components on wholesale and retail basis, including importing and exporting of said products.³² Meanwhile, the primary purpose of KWP is to engage "in the business of trading, manufacturing, assembling, selling, purchasing, distributing, servicing, and otherwise dealing in and with wear resistant linings and other industrial supplies and other related products and components on wholesale basis."³³ Considering that EAT and KWP's primary purposes are the same, save for the inclusion of "wear resistant linings" as KWP's product and the phrase "retail basis including importing and exporting of said products" in EAT's primary purpose, both companies clearly belong to the same industry. In the circumstances, Atty. Ballicud's new relation with EAT would prevent the full discharge of his duty of undivided fidelity and loyalty to KWP and would invite suspicion of unfaithfulness or double-dealing in the performance of his duty.

²⁸ *Quiambao v. Atty. Bamba*, 505 Phil. 126, 134 (2005).

²⁹ See *Tiania v. Atty. Ocampo*, 277 Phil. 537, 545 (1991); and *Hornilloa v. Atty. Salunat*, 453 Phil. 108, 112 (2003).

³⁰ 685 Phil. 322 (2012).

³¹ *Rollo*, Vol. 1 (1), p. 135.

³² *Id.* at 117.

³³ *Id.* at 17.



Atty. Ballicud's contentions that he never handled a case for, or against KWP and that he has no knowledge of any confidential information relating to KWP's business operations are of no moment. In *Quiambao*,³⁴ we emphasized that actual case or controversy is not required for the proscription against representation of conflicting interests to apply. The important criterion is the probability, and not the certainty, of conflict, *viz*:

It must be noted that the proscription against representation of conflicting interests finds application where the conflicting interests arise with respect to the same general matter however slight the adverse interest may be. It applies even if the conflict pertains to the lawyer's private activity or in the performance of a function in a non-professional capacity. In the process of determining whether there is a conflict of interest, an important criterion is probability, not certainty, of conflict.

Since the respondent has financial or pecuniary interest in SESSI, which is engaged in a business competing with his client's, and, more importantly, he occupies the highest position in SESSI, one cannot help entertaining a doubt on his loyalty to his client AIB. This kind of situation passes the second test of conflict of interest, which is whether the acceptance of a new relationship 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. The close relationship of the majority stockholders of both companies does not negate the conflict of interest. Neither does his protestation that his shareholding in SESSI is "a mere pebble among the sands."

In view of all of the foregoing, we find the respondent guilty of serious misconduct for representing conflicting interests.³⁵
(Emphases supplied and citation omitted.)

Thus, whether Atty. Ballicud is Spouses Gabriel's dummy, or that he has confidential information about KWP's business operations, the fact that Atty. Ballicud's actions invited suspicion of unfaithfulness, or double-dealing remains. Atty. Ballicud is guilty of misconduct for representing conflicting interests.

In cases where a lawyer was found guilty of representing conflicting interests, the Court imposed a penalty of one to three years suspension from the practice of law.³⁶

In *Quiambao*, we suspended the erring lawyer from the practice of law for representing opposing clients and for being an incorporator, stockholder, and president of a security agency at the time when he was still the legal

³⁴ *Quiambao v. Atty. Bamba*, 505 Phil. 126 (2005).

³⁵ *Id.* at 137.

³⁶ *Id.* at 139, citing *Vda. de Alisbo v. Jalandoni*, 276 Phil. 349 (1991); *PNB v. Cedo*, 312 Phil. 904 (1995); *Maturan v. Gonzales*, 350 Phil. 882 (1998); and *Northwestern University, Inc. v. Atty. Arquillo*, 503 Phil. 466 (2005).



counsel of another security agency. Likewise, in *Tiania*³⁷ we imposed a one-year suspension on a lawyer who represented his client in an ejectment case and gave legal advice to the defendant in the same case. Once again, the erring lawyer represented his client in another case and handled the adverse party's legal documents in a separate case. In *Aniñon*,³⁸ we also imposed a one-year suspension from the practice of law on a lawyer who prepared a Deed of Sale for his client but later on filed for its annulment on behalf of another client.

Meanwhile, in *Samson v. Atty. Era*,³⁹ we suspended a lawyer for two years when, after filing an estafa case for his client, he later on, represented the accused in other criminal cases involving the same pyramiding scam. The Court did not give credence to the lawyer's contention that his relationship with his previous client has already been terminated. The Court, in *Paces Industrial Corp. v. Salandanan*,⁴⁰ imposed a more severe penalty of suspension for three years on a lawyer who represented conflicting interests and deliberately used the information he obtained from his previous client to benefit the adverse party in the same case.

In this case, Pilar failed to prove and identify the confidential information about KWP's business operations, which Atty. Ballicud failed to protect. Also, Pilar failed to establish Atty. Ballicud's use of such confidential information for his personal gain. What has been clearly established is that Atty. Ballicud is guilty of misconduct for representing conflicting interest by setting up another corporation engaged in a business competing with KWP. Thus, Atty. Ballicud failed to observe candor, fairness, and loyalty in his dealings and transactions with KWP in violation of Rule 15.03, Canon 15, in relation to Rule 1.02, Canon 1 of the CPR.

Taking all of the above and relevant jurisprudence into account, the Court finds it proper to suspend Atty. Ballicud from the practice of law for a period of six (6) months.

FOR THESE REASONS, respondent Atty. Clarence T. Ballicud is **GUILTY** of violating Rule 1.02, Canon 1, and Rule 15.03, Canon 15 of the Code of Professional Responsibility. Atty. Clarence T. Ballicud is **SUSPENDED** from the practice of law for six (6) months. He is **WARNED** that a repetition of the same or similar wrongdoing in the future will be dealt with more severely.

The suspension in the practice of law shall take effect immediately upon respondent's receipt of this resolution. He is **DIRECTED** to immediately file a Manifestation to the Court that his suspension has started,

³⁷ *Tiania v. Atty. Ocampo*, 277 Phil 537 (1991).

³⁸ *Aniñon v. Atty. Sabitsana, Jr.*, *supra* note 30.

³⁹ 714 Phil. 101 (2013).

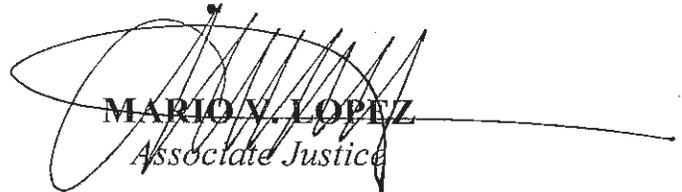
⁴⁰ 814 Phil. 93 (2017).



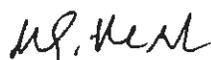
copy furnished all courts and quasi-judicial bodies where he has entered his appearance as counsel.

Let a copy of this resolution be furnished the Office of the Bar Confidant to be included in the records of the respondent; the Integrated Bar of the Philippines for distribution to all its chapters; and the Office of the Court Administrator for dissemination to all courts throughout the country.

SO ORDERED.


MARIO X. LOPEZ
Associate Justice

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson


ALEXANDER G. GESMUNDO
Associate Justice


AMY C. LAZARO-JAVIER
Associate Justice


RICARDO R. ROSARIO
Associate Justice