

ANGEL L. BAUTISTA, COMPLAINANT, VS. ATTY. RAMON A. GONZALES, RESPONDENT.*Adm. Matter No. 1625. February 12, 1990*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/2b2289a0f99d/>**PER CURIAM:**

In a verified complaint filed by Angel L. Bautista on May 19, 1976, respondent Ramon A. Gonzales was charged with malpractice, deceit, gross misconduct and violation of lawyer's oath. Required by this Court to answer the charges against him, respondent filed on June 19, 1976 a motion for a bill of particulars asking this Court to order complainant to amend his complaint by making his charges more definite. In a resolution dated June 28, 1976, the Court granted respondent's motion and required complainant to file an amended complaint. On July 15, 1976, complainant submitted an amended complaint for disbarment, alleging that respondent committed the following acts:

1. Accepting a case wherein he agreed with his clients, namely, Alfaro Fortunado, Nestor Fortunado and Editha Fortunado [hereinafter referred to as the Fortunados] to pay all expenses, including court fees, for a contingent fee of fifty percent (50%) of the value of the property in litigation;
2. Acting as counsel for the Fortunados in Civil Case No. Q-15143, wherein Eusebio Lopez, Jr. is one of the defendants and, without said case being terminated acting as counsel for Eusebio Lopez, Jr. in Civil Case No. Q-15490;
3. Transferring to himself one-half of the properties of the Fortunados, which properties are the subject of the litigation in Civil Case No. Q-15143, while the case was still pending;
4. Inducing complainant, who was his former client, to enter into a contract with him on August 30, 1971 for the development into a residential subdivision of the land involved in Civil Case No. Q-15143, covered by TCT No. T-1929, claiming that he acquired fifty percent (50%) interest thereof as attorney's fees from the Fortunados, while knowing fully well that the said property was already sold at a public auction on June 30, 1971, by the Provincial Sheriff of Lanao del Norte and registered with the Register of Deeds of Iligan City;
5. Submitting to the Court of First Instance of Quezon City falsified documents purporting to be true copies of "Addendum to the Land Development Agreement dated August 30, 1971" and submitting the same document to the Fiscal's Office of Quezon City, in connection with the complaint for estafa filed by respondent against complainant designated as I.S. No. 75-12936;
6. Committing acts of treachery and disloyalty to complainant who was his client;
7. Harassing the complainant by filing several complaints without legal basis before the Court of First Instance and the Fiscal's Office of Quezon City;
8. Deliberately misleading the Court of First Instance and the Fiscal's Office by making false assertion of facts in his pleadings;

9. Filing petitions "cleverly prepared (so) that while he does not intentionally tell a lie, he does not tell the truth either."

Respondent filed an answer on September 29, 1976 and an amended answer on November 18, 1976, denying the accusations against him. Complainant filed a reply to respondent's answer on December 29, 1976 and on March 24, 1977 respondent filed a rejoinder.

In a resolution dated March 16, 1983, the Court referred the case to the Office of the Solicitor General for investigation, report and recommendation. In the investigation conducted by the Solicitor General, complainant presented himself as a witness and submitted Exhibits "A" to "PP", while respondent appeared both as witness and counsel and submitted Exhibits "1" to "11". The parties were required to submit their respective memoranda.

On May 16, 1988 respondent filed a motion to dismiss the complaint against him, claiming that the long delay in the resolution of the complaint against him constitutes a violation of his constitutional right to due process and speedy disposition of cases. Upon order of the Court, the Solicitor General filed a comment to the motion to dismiss on August 8, 1988, explaining that the delay in the investigation of the case was due to the "numerous requests for postponement of scheduled hearings filed by both parties and the motions for extension of time to file their respective memoranda." [Comment of the Solicitor General, p. 2; Record, p. 365.] Respondent filed a reply to the Solicitor General's comment on October 26, 1988. In a resolution dated January 16, 1989 the Court required the Solicitor General to submit his report and recommendation within thirty (30) days from notice.

On April 11, 1989, the Solicitor General submitted his report with the recommendation that Atty. Ramon A. Gonzales be suspended for six (6) months. The Solicitor General found that respondent committed the following acts of misconduct:

- a. transferring to himself one-half of the properties of his clients during the pendency of the case where the properties were involved;
- b. concealing from complainant the fact that the property subject of their land development agreement had already been sold at a public auction prior to the execution of said agreement; and
- c. misleading the court by submitting alleged true copies of a document where two signatories who had not signed the original (or even the xerox copy) were made to appear as having fixed their signatures [Report and Recommendation of the Solicitor General, pp. 17-18; Rollo, pp. 403-404.]

Respondent then filed on April 14, 1989 a motion to refer the case to the Integrated Bar of the Philippines (IBP) for investigation and disposition pursuant to Rule 139-B of the Revised Rules of Court. Respondent manifested that he intends to submit more evidence before the IBP. Finally, on November 27, 1989, respondent filed a supplemental motion to refer this case to the IBP, containing additional arguments to bolster his contentions in his previous pleadings.

I.

Preliminarily, the Court will dispose of the procedural issue raised by respondent. It is respondent's contention that the preliminary investigation conducted by the Solicitor General was limited to the determination of whether or not there is sufficient ground to proceed with the case and that under Rule 139 the Solicitor General still has to file an administrative complaint against him. Respondent claims that the case should be referred to the IBP since Section 20 of Rule 139-B provides that:

This Rule shall take effect on June 1, 1988 and shall supersede the present Rule 139 entitled "DISBARMENT OR SUSPENSION OF ATTORNEYS." All cases pending investigation by the Office of the Solicitor General

shall be transferred to the Integrated Bar of the Philippines Board of Governors for investigation and disposition as provided in this Rule except those cases where the investigation has been substantially completed.

The above contention of respondent is untenable. In the first place, contrary to respondent's claim, reference to the IBP of complaints against lawyers is not mandatory upon the Court (Zaldivar v. Sandiganbayan, G.R. Nos. 79690-707; Zaldivar v. Gonzales, G.R. No. 80578, October 7, 1988.) Reference of complaints to the IBP is not an exclusive procedure under the terms of Rule 139-B of the Revised Rules of Court [Ibid.] Under Sections 13 and 14 of Rule 139-B, the Supreme Court may conduct disciplinary proceedings without the intervention of the IBP by referring cases for investigation to the Solicitor General or to any officer of the Supreme Court or judge of a lower court. In such a case, the report and recommendation of the investigating official shall be reviewed directly by the Supreme Court. The Court shall base its final action on the case on the report and recommendation submitted by the investigating official and the evidence presented by the parties during the investigation.

Secondly, there is no need to refer the case to the IBP since at the time of the effectivity of Rule 139-B [June 1, 1988] the investigation conducted by the Office of the Solicitor General had been substantially completed. Section 20 of Rule 139-B provides that only pending cases, the investigation of which has not been substantially completed by the Office of the Solicitor General, shall be transferred to the IBP. In this case the investigation by the Solicitor General was terminated even before the effectivity of Rule 139-B. Respondent himself admitted in his motion to dismiss that the Solicitor General terminated the investigation on November 26, 1986, the date when respondent submitted his reply memorandum [Motion to Dismiss, p. 1; Record, p. 353.]

Thirdly, there is no need for further investigation since the Office of the Solicitor General already made a thorough and comprehensive investigation of the case. To refer the case to the IBP, as prayed for by the respondent, will result not only in duplication of the proceedings conducted by the Solicitor General but also to further delay in the disposition of the present case which has lasted for more than thirteen (13) years.

Respondent's assertion that he still has some evidence to present does not warrant the referral of the case to the IBP. Considering that in the investigation conducted by the Solicitor General respondent was given ample opportunity to present evidence, his failure to adduce additional evidence is entirely his own fault. There was therefore no denial of procedural due process. The record shows that respondent appeared as witness for himself and presented no less than eleven (11) documents to support his contentions. He was also allowed to cross-examine the complainant who appeared as a witness against him.

II.

The Court will now address the substantive issue of whether or not respondent committed the acts of misconduct alleged by complainant Bautista.

After a careful review of the record of the case and the report and recommendation of the Solicitor General, the Court finds that respondent committed acts of misconduct which warrant the exercise by this Court of its disciplinary power.

The record shows that respondent prepared a document entitled "Transfer of Rights" which was signed by the Fortunados on August 31, 1971. The document assigned to respondent one-half (1/2) of the properties of the Fortunados covered by TCT No. T-1929, with an area of 239,650 sq. m., and TCT No. T-3041, with an area of 72,907 sq. m., for and in consideration of his legal services to the latter. At the time the document was executed, respondent knew that the abovementioned properties were the subject of a civil case [Civil Case No. Q-15143] pending before the Court of First Instance of Quezon City since he was acting as counsel for the Fortunados in

said case [See Annex "B" of Original Complaint, p. 12; Rollo, p. 16.] In executing the document transferring one-half (1/2) of the subject properties to himself, respondent violated the law expressly prohibiting a lawyer from acquiring his client's property or interest involved in any litigation in which he may take part by virtue of his profession [Article 1491, New Civil Code.] This Court has held that the purchase by a lawyer of his client's property or interest in litigation is a breach of professional ethics and constitutes malpractice [Hernandez v. Villanueva, 40 Phil. 774 (1920); Go Beltran v. Fernandez, 70 Phil. 248 (1940).]

However, respondent notes that Canon 10 of the old Canons of Professional Ethics, which states that "[t]he lawyer should not purchase any interests in the subject-matter of the litigation which he is conducting," does not appear anymore in the new Code of Professional Responsibility. He therefore concludes that while a purchase by a lawyer of property in litigation is void under Art. 1491 of the Civil Code, such purchase is no longer a ground for disciplinary action under the new Code of Professional Responsibility.

This contention is without merit. The very first Canon of the new Code states that "a lawyer shall uphold the Constitution, obey the laws of the land and promote respect for law and legal process" (*Italics supplied*). Moreover, Rule 138, Sec. 3 of the Revised Rules of Court requires every lawyer to take an oath to "obey the laws [of the Republic of the Philippines] as well as the legal orders of the duly constituted authorities therein." And for any violation of this oath, a lawyer may be suspended or disbarred by the Supreme Court (Rule 138, Sec. 27, Revised Rules of Court.) All of these underscore the role of the lawyer as the vanguard of our legal system. The transgression of any provision of law by a lawyer is a repulsive and reprehensible act which the Court will not countenance. In the instant case, respondent, having violated Art. 1491 of the Civil Code, must be held accountable both to his client and to society.

Parenthetically, it should be noted that the persons mentioned in Art. 1491 of the Civil Code are prohibited from purchasing the property mentioned therein because of their existing trust relationship with the latter. A lawyer is disqualified from acquiring by purchase the property and rights in litigation because of his fiduciary relationship with such property and rights, as well as with the client. And it cannot be claimed that the new Code of Professional Responsibility has failed to emphasize the nature and consequences of such relationship. Canon 17 states that "a lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him." On the other hand, Canon 16 provides that "a lawyer shall hold in trust all moneys and properties of his client that may come into his possession." Hence, notwithstanding the absence of a specific provision on the matter in the new Code, the Court, considering the abovequoted provisions of the new Code in relation to Art. 1491 of the Civil Code, as well as the prevailing jurisprudence, holds that the purchase by a lawyer of his client's property in litigation constitutes a breach of professional ethics for which a disciplinary action may be brought against him.

Respondent's next contention that the transfer of the properties was not really implemented, because the land development agreement on which the transfer depended was later rescinded, is untenable. Nowhere is it provided in the Transfer of Rights that the assignment of the properties of the Fortunados to respondent was subject to the implementation of the land development agreement. The last paragraph of the Transfer of Rights provides that:

. . . for and in consideration of the legal services of ATTY. RAMON A. GONZALES, Filipino, married to Lilia Yusay, and a resident of 23 Sunrise Hill, New Manila, Quezon City, rendered to our entire satisfaction, we hereby, by these presents, do transfer and convey to the said ATTY. RAMON A. GONZALES, his heirs, successor, and assigns, one-half (1/2) of our rights and interests in the above-described property, together with all the improvements found therein [Annex "D" of the Complaint, Record, p. 28; *Italics supplied*.]

It is clear from the foregoing that the parties intended the transfer of the properties to respondent to be absolute and unconditional, and irrespective of whether or not the land development agreement was implemented.

Another misconduct committed by respondent was his failure to disclose to complainant, at the time the land development agreement was entered into, that the land covered by TCT No. T-1929 had already been sold at a public auction. The land development agreement was executed on August 31, 1977 while the public auction was held on June 30, 1971.

Respondent denies that complainant was his former client, claiming that his appearance for the complainant in an anti-graft case filed by the latter against a certain Gilbert Teodoro was upon the request of complainant and was understood to be only provisional. Respondent claims that since complainant was not his client, he had no duty to warn complainant of the fact that the land involved in their land development agreement had been sold at a public auction. Moreover, the sale was duly annotated at the back of TCT No. T-1929 and this, respondent argues, serves as constructive notice to complainant so that there was no concealment on his part.

The above contentions are unmeritorious. Even assuming that the certificate of sale was annotated at the back of TCT No. T-1929, the fact remains that respondent failed to inform the complainant of the sale of the land to Samauna during the negotiations for the land development agreement. In so doing, respondent failed to live up to the rigorous standards of ethics of the law profession which place a premium on honesty and condemn duplicitous conduct. The fact that complainant was not a former client of respondent does not exempt respondent from his duty to inform complainant of an important fact pertaining to the land which is subject of their negotiation. Since he was a party to the land development agreement, respondent should have warned the complainant of the sale of the land at a public auction so that the latter could make a proper assessment of the viability of the project they were jointly undertaking. This Court has held that a lawyer should observe honesty and fairness even in his private dealings and failure to do so is a ground for disciplinary action against him [*Custodio v. Esto*, Adm. Case No. 1113, February 22, 1978, 81 SCRA 517.]

Complainant also charges respondent with submitting to the court falsified documents purporting to be true copies of an addendum to the land development agreement.

Based on evidence submitted by the parties, the Solicitor General found that in the document filed by respondent with the Court of First Instance of Quezon City, the signatories to the addendum to the land development agreement — namely, Ramon A. Gonzales, Alfaro T. Fortunado, Editha T. Fortunado, Nestor T. Fortunado, and Angel L. Bautista — were made to appear as having signed the original document on December 9, 1972, as indicated by the letters "(SGD.)" before each of their names. However, it was only respondent Alfaro Fortunado and complainant who signed the original and duplicate original (Exh. "2") and the two other parties, Edith Fortunado and Nestor Fortunado, never did. Even respondent himself admitted that Edith and Nestor Fortunado only signed the xerox copy (Exh. "2-A") after respondent wrote them on May 24, 1973, asking them to sign the said xerox copy attached to the letter and to send it back to him after signing [Rejoinder to Complainant's Reply, pp. 4-6; Rollo, pp. 327-329.] Moreover, respondent acknowledged that Edith and Nestor Fortunado had merely agreed by phone to sign, but had not actually signed, the alleged true copy of the addendum as of May 23, 1973 [Respondent's Supplemental Motion to Refer this Case to the Integrated Bar of the Philippines, p. 16.] Thus, when respondent submitted the alleged true copy of the addendum on May 23, 1973 as Annex "A" of his Manifestation filed with the Court of First Instance of Quezon City, he knowingly misled the Court into believing that the original addendum was signed by Edith Fortunado and Nestor Fortunado. Such conduct constitutes willful disregard of his solemn duty as a lawyer to act at all times in a manner consistent with the truth. A lawyer should never seek to mislead the court by an artifice or false statement of fact or law [Section 20 (d), Rule 138, Revised Rules of Court; Canon 22, Canons of Professional Ethics; Canon 10, Rule 10.01, Code of Professional Responsibility.]

Anent the first charge of complainant, the Solicitor General found that no impropriety was committed by

respondent in entering into a contingent fee contract with the Fortunados [Report and Recommendation, p. 8; Record, p. 394.] The Court, however, finds that the agreement between the respondent and the Fortunados, which provides in part that:

We [the Fortunados] agree on the 50% contingent fee, provided, you [respondent Ramon Gonzales] defray all expenses, for the suit, including court fees.

Alfaro T. Fortunado [signed]
Editha T. Fortunado [signed]
Nestor T. Fortunado [signed]

CONFORME

Ramon A. Gonzales [signed]

[Annex "A" to the Complaint, Record, p. 4.]

is contrary to Canon 42 of the Canons of Professional Ethics which provides that a lawyer may not properly agree with a client to pay or bear the expenses of litigation. [See also Rule 16.04, Code of Professional Responsibility.] Although a lawyer may in good faith, advance the expenses of litigation, the same should be subject to reimbursement. The agreement between respondent and the Fortunados, however, does not provide for reimbursement to respondent of litigation expenses paid by him. An agreement whereby an attorney agrees to pay expenses of proceedings to enforce the client's rights is champertous [JBP Holding Corp. v. U.S. 166 F. Supp. 324 (1958).] Such agreements are against public policy especially where, as in this case, the attorney has agreed to carry on the action at his own expense in consideration of some bargain to have part of the thing in dispute [See *Sampliner v. Motion Pictures Patents Co., et al.*, 255 F. 242 (1918).] The execution of these contracts violates the fiduciary relationship between the lawyer and his client, for which the former must incur administrative sanctions.

The Solicitor General next concludes that respondent cannot be held liable for acting as counsel for Eusebio Lopez, Jr. in Civil Case No. Q-15490 while acting as counsel for the Fortunados against the same Eusebio Lopez, Jr. in Civil Case No. Q-15143. The Court, after considering the record, agrees with the Solicitor General's findings on the matter. The evidence presented by respondent shows that his acceptance of Civil Case No. Q-15490 was with the knowledge and consent of the Fortunados. The affidavit executed by the Fortunados on June 23, 1976 clearly states that they gave their consent when respondent accepted the case of Eusebio Lopez, Jr. [Affidavit of Fortunados, dated June 23, 1976; Rollo, p. 198.] One of the recognized exceptions to the rule against representation of conflicting interests is where the clients knowingly consent to the dual representation after full disclosure of the facts by counsel [Canon 6, Canons of Professional Ethics; Canon 15, Rule 15.03, Code of Professional Responsibility.]

Complainant also claims that respondent filed several complaints against him before the Court of First Instance and the Fiscal's Office of Quezon City for the sole purpose of harassing him.

The record shows that at the time of the Solicitor General's investigation of this case, Civil Case No. Q-18060 was still pending before the Court of First Instance of Quezon City, while the complaints for libel (I.S. No. 76-5912) and perjury (I.S. No. 5913) were already dismissed by the City Fiscal for insufficiency of evidence and lack of interest, respectively [Report and Recommendation, pp. 16-17; Rollo, pp. 402-403.] The Solicitor General found no basis for holding that the complaints for libel and perjury were used by respondent to harass complainant. As to Civil Case No. Q-18060, considering that it was still pending resolution, the Solicitor General made no finding on complainant's claim that it was a mere ploy by respondent to harass him. The determination of the validity of the complaint in Civil Case No. Q-18060 was left to the Court of First Instance of Quezon City where the case was pending resolution.

The Court agrees with the above findings of the Solicitor General, and accordingly holds that there is no basis for holding that the respondent's sole purpose in filing the aforementioned cases was to harass complainant.

Grounds 6, 8 and 9 alleged in the complaint need not be discussed separately since the above discussion on the other grounds sufficiently cover these remaining grounds.

The Court finds clearly established in this case that on four counts the respondent violated the law and the rules governing the conduct of a member of the legal profession. Sworn to assist in the administration of justice and to uphold the rule of law, he has "miserably failed to live up to the standards expected of a member of the Bar." [Artiaga v. Villanueva, Adm. Matter No. 1892, July 29, 1988, 163 SCRA 638, 647.] The Court agrees with the Solicitor General that, considering the nature of the offenses committed by respondent and the facts and circumstances of the case, respondent lawyer should be suspended from the practice of law for a period of six (6) months.

WHEREFORE, finding that respondent Attorney Ramon A. Gonzales committed serious misconduct, the Court Resolved to SUSPEND respondent from the practice of law for SIX (6) months effective from the date of his receipt of this Resolution. Let copies of this Resolution be circulated to all courts of the country for their information and guidance, and spread in the personal record of Atty. Gonzales.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, and Cortes JJ., concur. Gutierrez, Jr., Griño-Aquino, Medialdea, and Regalado, JJ., no part. Had no part in deliberations. Sarmiento, J., no part; he is a close neighbor.

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