

**DR. GIL Y. GAMILLA, NORMA S. CALAGUAS, IRMA E. POTENCIANO,
EDITHA OCAMPO, LUZ DE GUZMAN, GLICERIA BALDRES,
FERDINAND LIMOS, MA. LOURDES C. MEDINA, HIDELITA GABO,
CORAZON CUI, RE...**

Adm. Case No. 4763. March 20, 2003

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

THIS DISBARMENT CASE EMANATED from an intra-union leadership dispute some seventeen (17) years ago that spilled over to the instant complaint alleging impropriety and double-dealing in the disbursement of sums of money entrusted by the University of Sto. Tomas to respondent Atty. Eduardo J. Mariño Jr. as president of the UST Faculty Union and his core of officers and directors for distribution among faculty members of the university.[1]

For a sense of history, sometime in 1986 respondent Atty. Mariño Jr. as president of the UST Faculty Union and other union officers entered into a collective bargaining agreement with the management of UST for the provision of economic benefits amounting to P35 million. Instead of creating a harmonious relationship between the contracting parties, the collective bargaining agreement regrettably engendered disputes arising from the interpretation and implementation thereof one of which even reached this Court.[2]

The 1986 collective bargaining agreement expired in 1988 but efforts to forge a new one unfortunately failed. In 1989 the faculty members of UST went on strike and as a counter-measure UST terminated the employment of sixteen (16) officers and directors of the UST Faculty Union including respondent. The dismissal precipitated anew bitter legal battles which were resolved by this Court in favor of the dismissed employees by ordering their reinstatement with back wages.[3]

In 1990 Secretary of Labor Ruben D. Torres prescribed the terms and conditions of a five (5)-year collective bargaining agreement between UST and the UST Faculty Union retroactive to 1988 when the 1986 collective bargaining agreement expired. In the same year, the administration of UST and the UST Faculty Union also entered into a compromise agreement for the payment of P7,000,000.00 from which P5,000,000.00 was intended to settle the back wages and other claims of the sixteen (16) union officers and directors of the UST Faculty Union, including herein respondent, who were earlier ordered reinstated by this Court, and the sum of P2,000,000.00 to satisfy the remaining obligations of UST under the 1986 collective bargaining agreement. It appears from the record that only P5,000,000.00 for the back wages and other claims of respondent Atty. Mariño and other concerned union officers and directors was paid immediately by UST while the satisfaction of the balance of P2,000,000.00 was apparently deferred to some unspecified time.

In 1992 UST and the UST Faculty Union executed a memorandum of agreement to settle the salary increases and other benefits under the collective bargaining agreement effective 1988 for the period 1 June 1991 to 31 May 1993 for a total of P42,000,000.00. It was agreed that the benefits accruing from 1 June 1991 to 31 October 1992

were to be taken from the sum of P42,000,000.00 which UST would release directly to the faculty members, while the remainder of the P42,000,000.00 package would be ceded by UST to the UST Faculty Union which would then disburse the balance to cover the benefits from 1 November 1992 to 31 May 1993. The memorandum of agreement also charged the amount of P2,000,000.00 agreed upon in the 1990 compromise agreement as well as the attorney's fees of Atty. Mariño worth P4,200,000.00 against the P42,000,000.00 outlay.

In accordance with the memorandum of agreement, UST took care of the disbursement of P20,226,221.60 from the total commitment of P42,000,000.00 to pay for the following expenses: (a) P2,000,000.00 as payment for unpaid obligations to faculty members under the 1986 collective bargaining agreement; (b) P13,833,597.96 for the salary increases of faculty members from 1 June 1991 to 31 October 1992; (c) P192,623.64 for telephone, electricity and water billings; and, (d) P4,200,000.00 paid to the UST Faculty Union as attorney's fees. The expenses left a collectible sum of P21,773,778.40 from the obligation of P42,000,000.00. The university however relinquished only P18,038,939.37 to the UST Faculty Union which was P3,734,839.03 short of the balance of P21,773,778.40. In the meantime, the UST Faculty Union placed P9,766,570.01 of the amount received from UST in the money market to earn as it did make P1,146,381.27 in interest.

For benefits corresponding to 1 November 1992 to 31 May 1993, the UST Faculty Union charged against the short-changed amount of P18,038,939.37 a total of P16,723,638.27 consisting of the following expenses: (a) P10,521,800.64 as the amount paid for salary increases beginning 1 November 1992 to 31 May 1993; (b) P578,296.31 which was refunded to the faculty members whose salaries were reduced as a result of their participation in the 1989 strike; (c) P2,045,192.97 as amount paid to the faculty members representing their December 1992 bonus; and, (d) P3,578,348.35 for reimbursements to the University of Santo Tomas. The expenses left a balance of P5,050,140.13, i.e., the remainder of P1,315,301.10 out of the P18,038,939.37 earlier turned over by UST to the UST Faculty Union, plus the deficit amount of P3,734,839.03 which UST later turned over to the UST Faculty Union after previously failing to deliver the amount. To the sum of P5,050,140.13, the UST Faculty Union added the interest earnings of P1,146,381.27 from money market investments as well as the amount of P192,632.64 representing the disallowed amount of expenses earlier deducted by UST from the P42,000,000.00 package. All in all, the money left in the possession of the UST Faculty Union was P6,389,154.04 which it distributed among the faculty members in 1994.

Complainants as members of the UST Faculty Union questioned the alleged lack of transparency among the officers and directors of the union in the management and disbursement of the monetary benefits for the faculty members. They initiated two (2) complaints with the Office of the Regional Director, National Capital Region, Department of Labor and Employment, one on 18 October 1995, docketed as Case No. NCR-OD-M-9412-022, and another, on 16 November 1996, docketed as Case No. NCR-OD-M-9510-028. In both pleadings, they prayed for the expulsion of the officers and directors of the union led by respondent Atty. Mariño because of their alleged failure to account for the balance of the P42,000,000.00 ceded to them by UST and the attorney's fees amounting to P4,200,000.00 which they deducted from the benefits allotted to faculty members.[4]

On 2 July 1997 complainants filed the instant complaint for disbarment against Atty. Mariño accusing him of (a) compromising their entitlements under the 1986 collective bargaining agreement without the knowledge, consent or ratification of the union members, and worse, for only P2,000,000.00 when they could have received more than P9,000,000.00; (b) failing to account for the P7,000,000.00 received by him and other officers and directors in the UST Faculty Union under the 1990 compromise agreement; (c) lack of transparency in the administration and distribution of the remaining balance of the P42,000,000.00 package under the 1992 memorandum of agreement; (d) refusal to remit and account for the P4,200,000.00 in favor of the faculty members although the amount was denominated as attorney's fees. Complainants asserted that respondent violated Rules 1.01[5] and 1.02[6] of

Canon 1; Rule 15.08[7] of Canon 15; Rules 16.01,[8] 16.02[9] and 16.03[10] of Canon 16; and Rule 20.04[11] of Canon 20, of the Code of Professional Responsibility.

On 4 November 1997, after several extensions Atty. Mariño filed his comment on the complaint. He alleged that the issues raised therein were the same issues involved in the two (2) complaints before the Bureau of Labor Relations and therefore constituted forum-shopping, and further explained that he had adequately accounted for the disbursement of the money demanded by complainants.

On 18 March 1998 we referred the disbarment complaint and the comment thereon to the Integrated Bar of the Philippines for investigation, report and recommendation within ninety (90) days from notice thereof.

On 18 May 1999 we received the Report of IBP Commissioner Lydia A. Navarro as well as the Resolution of 30 March 1999 of the IBP Board of Governors adopting and approving the Report which found the complaint meritorious and suspended respondent Atty. Mariño from the practice of law “until such time that the required detailed accounting of the questioned remittances made by UST to the UST [Faculty Union] during his incumbency as President and Legal Counsel has been officially submitted and reported to the UST [Faculty Union] and to the IBP.”

On 7 September 1999 respondent filed his comment on the IBP Report and Resolution and alleged the same contentions he previously asserted. On 27 October 1999 we referred the case back to the IBP for a more detailed investigation and submission of report and recommendation within sixty (60) days from notice.

In the meantime, or on 27 May 1999, the Regional Director found merit in the two (2) complaints docketed as Case No. NCR-OD-M-9412-022 and Case No. NCR-OD-M-9510-028 and ordered the expulsion of respondent and the other officers and directors of the union led by respondent Atty. Mariño because of their failure to account for the balance of the P42,000,000.00 that had been delivered to them by the management of UST, and their collection of exorbitant and illegal attorney’s fees amounting to P4,200,000.00.[12]

On 9 March 2000 the Bureau of Labor Relations in the appeal docketed as BLR-A-TR-52-25-10-99 set aside the Order of the Regional Director. It found that the balance of the P42,000,000.00 which UST delivered to the UST Faculty Union had been fully and adequately accounted for by respondent and the other officers and directors of the union.[13] Nonetheless, the Bureau of Labor Relations ordered respondent and the other officers and directors of the union to distribute the attorney’s fees of P4,200,000.00 among the faculty members and to immediately hold the elections for union officers and directors in view of the expiration of their respective terms of office.

On 16 March 2001 the Decision of the Bureau of Labor Relations was affirmed in toto by the Court of Appeals in CA-G.R. SP No. 60657.[14] The Decision of the Court of Appeals was elevated to this Court, docketed G.R. No. 149763, where the case is allegedly still pending resolution.

On 25 September 2002 we received the detailed Report and Recommendation of IBP Commissioner Lydia A. Navarro and the IBP Resolution of 3 August 2002 of the Board of Governors adopting and approving the Report which recommended the lifting of Atty. Mariño’s suspension from law practice since he had sufficiently accounted for the funds in question.

For a start, it appears that complainants did not file a petition with this Court to review the IBP Resolution exonerating respondent from the accusations against him and lifting his suspension from the practice of law, an action otherwise required under Sec. 12, Rule 139-B of the Rules of Court if the case against respondent could still proceed in this Court. Nevertheless since the IBP Resolution is merely recommendatory, and considering further the instructional value of this case to members of the Bench, many of whom are engaged simultaneously in other businesses or professions, we find it prudent and judicious to decide the instant case once and for all.

In fine, there are ethical lapses on the part of respondent Atty. Eduardo J. Mariño Jr. in the manner by which he secured the P7,000,000.00 by virtue of the compromise agreement and the P4,200,000.00 attorney's fees under the memorandum of agreement. Although the record shows that the Bureau of Labor Relations found respondent as having adequately accounted for the disbursement of the funds which the UST Faculty Union received through the series of agreements with the management of UST, this Court believes that Atty. Mariño failed to avoid conflict of interests, first, when he negotiated for the compromise agreement wherein he played the diverse roles of union president, union attorney and interested party being one of the dismissed employees seeking his own restitution, and thereafter, when he obtained the attorney's fees of P4,200,000.00 without full prior disclosure of the circumstances justifying such claim to the members of the UST Faculty Union.

As one of the sixteen (16) union officers and directors seeking compensation from the University of Santo Tomas for their illegal dismissal, respondent was involved in obvious conflict of interests when in addition he chose to act as concurrent lawyer and president of the UST Faculty Union in forging the compromise agreement. The test of conflict of interest among lawyers 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." [15] In the same manner, it is undoubtedly a conflict of interests for an attorney to put himself in a position where self-interest tempts, or worse, actually impels him to do less than his best for his client.

Thus it has been held that an attorney or any other person occupying fiduciary relations respecting property or persons is utterly disabled from acquiring for his own benefit the property committed to his custody for management. [16] This rule is entirely independent of whether fraud has intervened as in fact no fraud need be shown; no excuse will be heard from an attorney because the rule stands on the moral obligation to refrain from placing oneself in positions that ordinarily excite conflict between self-interest and integrity.

Necessarily, a lawyer cannot continue representing a client in an action or any proceeding against a party even with the client's consent after the lawyer brings suit in his own behalf against the same defendant if it is uncertain whether the defendant will be able to satisfy both judgments. [17] No doubt, a lawyer is not authorized to have financial stakes in the subject matter of the suit brought in behalf of his client. [18]

In the instant case, quite apart from the issue of validity of the 1990 compromise agreement, this Court finds fault in respondent's omission of that basic sense of fidelity to steer clear of situations that put his loyalty and devotion to his client, the faculty members of UST, open to question. Atty. Mariño both as lawyer and president of the union was duty bound to protect and advance the interest of union members and the bargaining unit above his own. This obligation was jeopardized when his personal interest as one of the dismissed employees of UST complicated the negotiation process and eventually resulted in the lopsided compromise agreement that rightly or wrongly brought money to him and the other dismissed union officers and directors, seemingly or otherwise at the expense of the faculty members.

The facts would affirm this observation. In brokering the compromise agreement, respondent received P5,000,000.00 as compensation for the dismissed union officials while only P2,000,000.00 apparently settled UST's obligations in favor of the faculty members under the 1986 collective bargaining agreement when their original claim amounted to at least P9,000,000.00. Worse, the P2,000,000.00 concession for accountabilities demandable long ago in 1986 was paid only in 1992 under the memorandum of agreement, or a period of more than two (2) years after the execution of the compromise agreement, in contrast to the immediate payment of the P5,000,000.00 to Atty. Mariño and the other union officers and directors.

Respondent Atty. Mariño ought to have disclosed to the members of the UST Faculty Union, if not the entire

bargaining unit of faculty members, his interest in the compromise agreement as one of the dismissed union officers seeking compensation for the claim of back wages and other forms of damages, and also the reasons for reducing the claim of the faculty members from more than P9,000,000.00 to only P2,000,000.00. As the record shows, the explanations for respondent's actions were disclosed only years after the consummation of the compromise agreement, particularly only after the instant complaint for disbarment was filed against him, when the accounting should have been forthcoming either before or during the settlement of the labor case against the management of UST.

Equally important, since respondent and the other union officers and directors were to get for themselves a lion's share of the compromise as they ultimately did, Atty. Mariño should have unambiguously divulged and made clear to his client the compelling probability of conflict of interests. He should have voluntarily turned over the reins of legal representation to another lawyer who could have acted on the matter with a deep sense of impartiality over the several claims against UST and an unfettered commitment to the cause of the faculty members.

Furthermore, there was lack of notice and transparency in respondent's dual role as lawyer and president of the UST Faculty Union when he obtained P4,200,000.00 as attorney's fees. Without ruling on the validity of the collection of attorney's fees so as not to pre-empt the decision in G.R. No. 149763 on this issue, the record does not show any justification for such huge amount of compensation nor any clear differentiation between his legal services and his tasks as union president comprising in all probability the same duties for which he had collected a hefty compensation as attorney for the union.

The situation of Atty. Mariño is not any different from that of an executor or administrator of an estate who may not charge against the estate any professional fee for legal services rendered by him because his efforts as such are already paid for in his capacity as executor or administrator.^[19] Indeed, he could have avoided complaints and perceptions of self-enrichment arising from the levy of attorney's fees by spelling out the terms and bases for the claim of P4,200,000.00 since the compensation for his services as president of the union should have otherwise covered his legal services as well.

Regardless of the motivations of respondent in perfecting the compromise agreement or demanding the inexplicable attorney's fees, his actions were not transparent enough to allow the bargaining unit ample information to decide freely and intelligently. Clearly, he violated Canon 15 of the Code of Professional Responsibility requiring every lawyer to "observe candor, fairness and loyalty in all his dealings and transactions with his clients." Lawyers are vanguards in the bastion of justice so they are without doubt expected to have a bigger dose of service-oriented conscience and a little less of self-interest.

As indispensable part of the system of administering justice, attorneys must comply strictly with the oath of office and the canons of professional ethics - a duty more than imperative during these critical times when strong and disturbing criticisms are hurled at the practice of law. The process of imbibing ethical standards can begin with the simple act of openness and candor in dealing with clients, which would progress thereafter towards the ideal that a lawyer's vocation is not synonymous with an ordinary business proposition but a serious matter of public interest.

The evidence on record proves that Atty. Mariño failed to disclose at crucial moments significant information about the manner by which he secured the P7,000,000.00 by virtue of the compromise agreement and the P4,200,000.00 attorney's fees under the memorandum of agreement. A simple accounting of the money that he and others concerned received from UST, as well as an explanation on the details of the agreements, would have enlightened the faculty members about the probability of conflict of interests on respondent's part and guided

them to look for alternative actions to protect their own interests.

In light of the irrefragable fact of respondent's misdemeanor, a possible mitigation of his actionable conduct was that the attorney's fees and the compromise agreement were negotiated and finalized under the most strenuous circumstances where his leadership and that of his core officers and directors were incessantly challenged by complainants allegedly aided by factions within UST itself. He might also have believed that the settlement achieved immense benefits for his constituents which would not have been otherwise obtained if he had chosen to relinquish the rein of legal representation to some other lawyer. Finally, it was not improbable for him to suppose though wrongly that he could represent and in some manner serve the interests of all of them, including his own, by pushing for and seeking the approval of the agreements himself. [20]

We reiterate that the objective of a disciplinary case is not so much to punish the individual attorney as to protect the dispensation of justice by sheltering the judiciary and the public from the misconduct or inefficiency of officers of the court. Restorative justice not retribution is our goal in this type of proceedings. In view of this, instead of taking a more stern measure against respondent, a reprimand and a warning would be sufficient disciplinary action in accordance with our ruling in *Sumangil v. Sta. Romana*. [21] Hence, Atty. Mariño is admonished to refrain from all appearances and acts of impropriety including circumstances indicating conflict of interests, and to behave at all times with circumspection and dedication befitting a member of the Bar, especially observing candor, fairness and loyalty in all transactions with his client. [22]

WHEREFORE, respondent Atty. Eduardo J. Mariño Jr. is REPRIMANDED for his misconduct with a warning that a more drastic punishment will be imposed on him upon a repetition of the same act.

SO ORDERED.

Mendoza, Quisumbing, Austria-Martinez and Callejo, Sr., JJ., concur.

[1] Rollo, p. 124.

[2] *University of Santo Tomas Faculty Union v. National Labor Relations Commission*, G.R. No. 90445, 2 October 1990, 190 SCRA 215.

[3] *University of Sto. Tomas v. National Labor Relations Commission*, G.R. No. 89920, 18 October 1990, 190 SCRA 758.

[4] Complainants herein filed two (2) other cases with the Office of the Regional Director, National Capital Region, Department of Labor and Employment, i.e., NCR-OD-M-9610-001 and NCR-OD-M-9611-009, consisting of charges against the continued incumbency of respondent Atty. Mariño and other officers and directors of the UST Faculty Union, which were consolidated with NCR-OD-M-9412-022 and NCR-OD-M-9510-028.

[5] Rule 1.01, Canon 1: "A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct."

[6] Rule 1.02, Canon 1: "A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system."

[7] Rule 15.08, Canon 15: "A lawyer who is engaged in another profession or occupation concurrently with the practice of law shall make clear to his client whether he is acting as a lawyer or in another capacity."

[8] Rule 16.01, Canon 16: "A lawyer shall account for all money or property collected or received for or from the client."

[9] Rule 16.02, Canon 16: “A lawyer shall keep the funds of each client separate and apart from his own and those of others kept by him.”

[10] Rule 16.03, Canon 16: “A lawyer shall deliver the funds and property of his client when due or upon demand
x x x x”

[11] Rule 20.02, Canon 20: “A lawyer shall avoid controversies with clients concerning his compensation and shall resort to judicial action only to prevent imposition, injustice or fraud.”

[12] Penned by Regional Director Maximo B. Lim of the Department of Labor and Employment – National Capital Region.

[13] Penned by Director Benedicto Ernesto R. Bitonio Jr. of the Bureau of Labor Relations.

[14] Penned by then Associate Justice (now Associate Justice of this Court) Romeo J. Callejo Jr. and concurred in by Associate Justices Renato C. Dacudao and Perlita J. Tria Tirona of the Fourteenth Division.

[15] *Tiania v. Ocampo*, A.C. No. 2285, 12 August 1991, 200 SCRA 472, 479 citing *In re Dela Rosa*, 27 Phil. 258 (1914).

[16] *Severino v. Severino*, 44 Phil. 343 (1923).

[17] R. Agpalo, *Legal Ethics* 233 (1989), citing American Bar Association Opinion 132 (15 March 1935).

[18] *Ibid.*, citing American Bar Association Opinion 288 (11 October 1954).

[19] See Sec. 7, Rule 85, Rules of Court; *Chung Muy Co’s Administrator v. Quioc*, 23 Phil. 518 (1912).

[20] See *Sumangil v. Sta. Romana* 84 Phil. 777 (1949).

[21] *Ibid.*

[22] *Deles v. Aragonas Jr.*, A.C. No. 598, 28 March 1969, 27 SCRA 634.

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