

HEIRS OF LYDIO “JERRY” FALAME, namely: MELBA FALAME, LEO FALAME and JERRY FALAME, Complainants, vs. ATTY. EDGAR J. BAGUIO, Respondent.*ADM. CASE NO. 6876. March 07, 2008*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/4b0a11bcfc24/>**TINGA, J.:**

On Petition for Review[1] is the Resolution of the Integrated Bar of the Philippines (IBP) Board of Governors dismissing the disbarment complaint filed by the Heirs of Lydio “Jerry” Falame (complainants) against Atty. Edgar J. Baguio (respondent), docketed as CBD Case No. 04-1191.

In their Complaint[2] against respondent, complainants alleged that on 15 July 1991, their father, the late Lydio “Jerry” Falame (Lydio), engaged the services of respondent to represent him in an action for forcible entry docketed as Civil Case No. A-2694 (the first civil case) and entitled “Heirs of Emilio T. Sy, represented by Anastacia Velayo Vda. De Sy and Belen V. Sy vs. Lydio ‘Jerry’ Falame, Raleigh Falame and Four (4) John Does,” in which Lydio was one of the defendants.[3]

Complainants recounted that respondent, as counsel for the defendants, filed the answer to the complaint in the first civil case. Subsequently, when the parties to the first civil case were required to file their respective position papers, respondent used and submitted in evidence the following: (1) a special power of attorney dated 1 July 1988 executed by Lydio in favor of his brother, Raleigh Falame, appointing the latter to be his attorney-in-fact; and (2) the affidavit of Raleigh Falame dated 23 July 1988, executed before respondent, in which Raleigh stated that Lydio owned the property subject of the first civil case.[4]

Complainants claimed that even after the Municipal Trial Court of Dipolog City had ruled in favor of the defendants in the first civil case, Lydio retained the services of respondent as his legal adviser and counsel for his businesses until Lydio’s death on 8 September 1996.[5]

However, on 23 October 2000, in representation of spouses Raleigh and Noemi Falame, respondent filed a case against complainants allegedly involving the property subject of the first civil case, entitled “Spouses Rally F. Falame and Noemi F. Falame v. Melba A. Falame, Leo A. Falame, Jerry A. Falame, Jr., Sugni Realty Holdings and Development Corporations, their representatives, agents and persons acting in their behalf” and docketed as Civil Case No. 5568 (the second civil case) before the Regional Trial Court of Dipolog City, Branch 6. The complaint sought the declaration of nullity of the deed of sale, its registration in the registry of deeds, Transfer Certificate of Title No. 20241 issued as a consequence of the registration of the deed of sale, and the real estate mortgage on the said property. Alternatively, it prayed for specific performance and reconveyance or legal redemption and damages with preliminary injunction and restraining order.[6]

Firstly, complainants maintained that by acting as counsel for the spouses Falame in the second civil case wherein they were impleaded as defendants, respondent violated his oath of office and duty as an attorney. Plainly, they contended that the spouses Falame’s interests are adverse to those of his former client, Lydio.[7]

Secondly, complainants claimed that respondent knowingly made false statements of fact in the complaint in the second civil case to mislead the trial court. In so doing, respondent violated paragraph (d), Section 20[8] of Rule 138 of the Rules of Court,[9] complainants asserted further.

Lastly, complainants alleged that the second civil case is a baseless and fabricated suit which respondent filed as counsel for complainants' uncle against the heirs of respondent's deceased client. Specifically, they averred that respondent filed the case for the sole purpose of retaining, maintaining and/or withholding the

possession of the subject property from complainants who are its true owners. Complainants concluded that respondent violated paragraph (g), Section 20[10] of Rule 138 of the Rules of Court.[11]

In his Answer with Motion to Dismiss,[12] respondent controverted complainants' allegations. He emphasizes that it was only Raleigh Falame who personally engaged his legal services for him and on Lydio's behalf and that, in fact, it was Raleigh who paid him the attorney's fees. He also stated that he signed the jurat in Raleigh's affidavit, which was submitted as evidence in the first civil case, believing to the best of his knowledge that there is good ground to support it. Insisting that he did not betray the confidence reposed in him by Lydio as the latter's counsel in the first civil case, respondent maintained that he did not reveal or use any fact he acquired knowledge of during the existence of the attorney-client relation in the first civil case as he had never even conferred with nor talked to Lydio in the first place. Respondent likewise contended that he did not knowingly make any misleading or untruthful statement of fact in the complaint in the second civil case and neither did he employ any means inconsistent with truth and honor in the hearing of the case.[13]

Respondent vigorously averred that Lydio had not retained him as counsel in any case or transaction. Stressing the long interval of twelve years separating the termination of the first civil case and his acceptance of the second civil case, respondent pointed out that the first civil case was not between Lydio and Raleigh but rather between the heirs of Emilio T. Sy on one hand and Lydio and Raleigh on the other where physical possession of property was at stake. Respondent further averred that in contrast the second civil case is one involving the spouses Raleigh and Noemi Falame as plaintiffs, and Melba, Leo and Jerry Jr., all surnamed Falame, and Sugni Realty Holdings and Development Corporation, as defendants—a case which arose from the wrongful acts committed by Melba, Leo and Jerry Jr. after Lydio's death.[14]

Respondent maintained that since the second civil case was still pending before the trial court, the IBP had no jurisdiction over the instant administrative case. He added that complainants filed this administrative case when Raleigh could no longer testify in his own favor as he had died a year earlier. [15]

In their Position Paper[16] dated 7 September 2004, in addition to their previous charges against respondent, complainants claimed that respondent violated Rule 15.03[17] of the Code of Professional Responsibility when he represented the cause of the spouses Falame against that of his former client, Lydio.[18]

On 25 June 2005, the IBP Board of Governors passed Resolution No. XVI-2005-167 adopting and approving Investigating Commissioner Winston D. Abuyan's report and recommendation for the dismissal of this administrative case, thus:[19]

x x x The charge lacks specification as to what part of the lawyer's oath was violated by the respondent and what confidence was disclosed. The complainants may have in mind the prohibition against disclosure of secret information learned in confidence, but there is no specification in the complaint what secret or information learned in confidence under Civil Case No. A-2694 was disclosed or will be disclosed by respondent in Civil Case No. 5568. In administrative complaints for disbarment or suspension against lawyers, the complainant must specify in the affidavit-complaint the alleged secrets or confidential information disclosed or will be disclosed in the professional employment (Uy v. Gonzalez, 426 SCRA 422; 431). In the

absence of such specification, the complaint must fail.

In the complaint, there is no specific charge against respondent for violation of Canon 15, Rule 15.03 of the Code of Professional Responsibility about the prohibition against representation of conflicting interest. So, the allegation in paragraph 1, page 8 and 9 of complainants' position paper stating: With all due respect, it is submitted that respondent violated Canon 15, Rule 15.03 of the Code of Professional Responsibility" cannot be countenanced. The reason being that it is an elementary principle of due process to which the respondent is entitled that only those charged in the complaint can be proved by the complainants. A charge not specified in the complaint cannot be proved (*Uy v. Gonzales*, id.)

x x x But still this charge will not proper for lack of sufficient bases.

x x x

Civil Case No. 5568, which was commenced on 03 October 2000, or three years since the complainants became owners of Lydio Falame's properties, is a suit against the complainants, not as representatives of Lydio Falame, but as owners of their respective aliquot interests in the property in question (*Gayon v. Gayon*, 36 SCRA 104; 107-108). The complainants are sued not on the basis of the acts, rights, obligations and interest of Lydio Falame on the material possession of the improvements found on Lot 345 litigated in Civil Case No. A-2694 nor even on such land itself, but rather on the facts alleged in the second amended and supplemental complaint which give rise to their cause of action against them.

While the complainants could not specify under what circumstances the respondent committed [the] alleged breach of confidence, breach of secrecy or revelation of secret or confidential information[,] the respondent has shown that he did not commit any violation of such duties or obligations of an attorney.

It is clear that only Raleigh Falame engaged the legal services of the respondent for his and Lydio Falame's defense in Civil Case No. A-2694.

x x x

The other allegations of the complainants that the respondent violated paragraph (d), Section 20 of Rule 139, Rules of Court, and his lawyer's oath when he allegedly betrayed the trust and confidence of his former client by denying knowledge of the fact that the land was owned by Lydio Falame and when he did not disclose to the Court that at one time his present clients categorically declared and unconditionally recognized the full ownership of the late Lydio Falame and complainant Melba Falame over subject matter of both cases equally lacks evidentiary basis.

x x x

It is beyond the competence of the complainants to conclude and is outside the jurisdiction of this Honorable Commission to rule as to whether or nor (sic) the complaint in Civil Case No.5568 is baseless or fabricated. It is only the Honorable Court which has the exclusive jurisdiction to determine the same and cannot be the subject of an administrative complaint against the respondent.

x x x

WHEREFORE, premises considered, it is respectfully recommended that this complaint be dismissed on grounds of prescription, the same having been filed four (4) years after the alleged misconduct took place and for lack of merit.

RESPECTFULLY SUBMITTED.[20]

Dissatisfied, complainants filed the instant petition for review under Rule 45 of the Rules of Court reiterating their allegations in the complaint and their position paper.[21] They likewise assert that the IBP erred in holding that

the instant administrative complaint had been filed out of time since it was filed on 16 January 2004, or three (3) years, four (4) months and sixteen (16) days after the second civil case was filed on 23 October 2000. [22] In addition, in their Consolidated Comment (should be Consolidated Reply),[23] complainants invoke the Court's ruling in *Frias v. Bautista-Lozada*[24] to support their contention that administrative complaints against members of the bar do not prescribe.[25]

In his Comment,[26] respondent principally maintains that the charges imputed to him have never been proven by clear, convincing and satisfactory evidence which is the quantum of proof required in administrative cases against lawyers, and that complainants have the burden to prove their accusations as he enjoys the presumption of innocence.[27] Respondent likewise asserts that in accusing him of violation of Rule 15.03 of the Code of Professional Responsibility only in their position paper and in the instant petition, complainants infringed his right to due process and to be informed of the nature and cause of accusation against him.[28]

There is merit in the petition.

At the outset, the Court holds that the instant administrative action is not barred by prescription. As early as 1947, the Court held in *Calo, Jr. v. Degamo*,[29] to wit:

The ordinary statutes of limitation have no application to disbarment proceedings, nor does the circumstance that the facts set up as a ground for disbarment constitute a crime, prosecution for which in a criminal proceeding is barred by limitation, affect the disbarment proceeding x x x (5 Am. Jur. 434)[30]

This doctrine was reaffirmed in the relatively recent case of *Frias v. Bautista-Lozada*[31] where the Court held that Rule VII, Section 1 of the Rules of Procedure of the CBD-IBP, which provides for a prescriptive period for the filing of administrative complaints against lawyers, should be struck down as void and of no legal effect for being ultra vires. [32]

Prescinding from the unavailability of the defense of prescription, the Court concurs with the Investigating Commissioner's opinion that some of the charges raised by complainants in their complaint are unsubstantiated.

There is, however, sufficient basis to hold respondent accountable for violation of Rule 15.03 of the Code of Professional Responsibility. While this charge was not raised in the initiatory pleading, it was put forward in complainants' position paper filed with the IBP and in the petition filed with the Court. In fact, respondent proffered his defenses to the charge in his position paper before the IBP and likewise in his comment before the Court. In his very first pleading before the IBP, the answer with motion to dismiss, he denied having Lydio as his client. Such absence of attorney-client relationship is the essential element of his defense to the charge of conflict of interest, as articulated in his subsequent submissions.

The Court, therefore, rules and so holds that respondent has been adequately apprised of and heard on the issue. In administrative cases, the requirement of notice and hearing does not connote full adversarial proceedings. Actual adversarial proceedings only become necessary for clarification when there is a need to propound searching questions to witnesses who give vague testimonies. Due process is fulfilled when the parties were given reasonable opportunity to be heard and to submit evidence in support of their arguments.[33]

Rule 15.03 of the Code of Professional Responsibility provides:

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

A lawyer may not, without being guilty of professional misconduct, act as counsel for a person whose interest conflicts with that of his present or former client.[34] The test is whether, on behalf of one client, it is the

lawyer's duty to contest for that which his duty to another client requires him to oppose or when the possibility of such situation will develop.[35] The rule covers not only cases in which confidential communications have been confided, but also those in which no confidence has been bestowed or will be used.[36] In addition, the rule holds even if the inconsistency is remote or merely probable or the lawyer has acted in good faith and with no intention to represent conflicting interests.[37]

The rule concerning conflict of interest prohibits a lawyer from representing a client if that representation will be directly adverse to any of his present or former clients. In the same way, a lawyer may only be allowed to represent a client involving the same or a substantially related matter that is materially adverse to the former client only if the former client consents to it after consultation. The rule is grounded in the fiduciary obligation of loyalty.[38] In the course of a lawyer-client relationship, the lawyer learns all the facts connected with the client's case, including the weak and strong points of the case. The nature of that relationship is, therefore, one of trust and confidence of the highest degree. [39]

The termination of attorney-client relation provides no justification for a lawyer to represent an interest adverse to or in conflict with that of the former client. The client's confidence once reposed should not be divested by mere expiration of professional employment. Even after the severance of the relation, a lawyer should not do anything which will injuriously affect his former client in any matter in which he previously represented him nor should he disclose or use any of the client's confidences acquired in the previous relation.[40]

In relation to this, Canon 17 of the Code of Professional Responsibility provides that a lawyer owes fidelity to the cause of his client and shall be mindful of the trust and confidence reposed on him. His highest and most unquestioned duty is to protect the client at all hazards and costs even to himself. [41] The protection given to the client is perpetual and does not cease with the termination of the litigation, nor is it affected by the party's ceasing to employ the attorney and retaining another, or by any other change of relation between them. It even survives the death of the client.[42]

In the case at bar, respondent admitted having jointly represented Lydio and Raleigh as defendants in the first civil case. Evidently, the attorney-client relation between Lydio and respondent was established despite the fact that it was only Raleigh who paid him. The case of *Hilado v. David*[43] tells us that it is immaterial whether such employment was paid, promised or charged for.[44]

As defense counsel in the first civil case, respondent advocated the stance that Lydio solely owned the property subject of the case. In the second civil case involving the same property, respondent, as counsel for Raleigh and his spouse, has pursued the inconsistent position that Raleigh owned the same property in common with Lydio, with complainants, who inherited the property, committing acts which debase respondent's rights as a co-owner.

The fact that the attorney-client relation had ceased by reason of Lydio's death or through the completion of the specific task for which respondent was employed is not reason for respondent to advocate a position opposed to that of Lydio.[45] Precedents tell us that even after the termination of his employment, an attorney may not act as counsel against his client in the same general matter, even though, while acting for his former client, he acquired no knowledge which could operate to his client's disadvantage in the subsequent adverse employment.[46] And while complainants have never been respondent's clients, they derive their rights to the property from Lydio's ownership of it which respondent maintained in the first civil case.

For representing Raleigh's cause which is adverse to that of his former client—Raleigh's supposed co- ownership of the subject property— respondent is guilty of representing conflicting interests. Having previously undertaken joint representation of Lydio and Raleigh, respondent should have diligently studied and anticipated the

potential conflict of interest. Accordingly, disciplinary action is warranted.[47] Heretofore, respondent is enjoined to look at any representation situation from “the point of view that there are possible conflicts”; and further, “to think in terms of impaired loyalty” that is to evaluate if his representation in any way will impair loyalty to a client.[48] Considering, however, that this is respondent’s first offense, the Court resolves to reprimand respondent, with admonition to observe a higher degree of fidelity in the practice of his profession.[49]

WHEREFORE, respondent Atty. Edgar J. Baguio is found GUILTY of representing conflicting interests and meted out the penalty of REPRIMAND. He is further admonished to observe a higher degree of fidelity in the practice of his profession and to bear in mind that a repetition of the same or similar acts will be dealt with more severely.

SO ORDERED.

Carpio, (Acting Chairperson), Carpio Morales, Azcuna,[*] and Velasco, Jr., JJ., concur.

[*] As replacement of Justice Leonardo A. Quisumbing who is on official leave per Administrative Circular No. 84-2007.

[1] Rollo, pp. 691-718.

[2]Id. at 1-6; dated 7 January 2004.

[3] Id. at 2.

[4]Id. at 2-3.

[5]Id. at 3.

[6] Id. at 33.

[7]Id. at 3.

[8] It reads as follows:

SEC. 20. Duties of attorneys.- It is the duty of an attorney:

(d) To employ, for the purpose of maintaining the causes confided to him, such means only as are consistent with truth and honor, and never seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law;

[9] Rollo, pp. 4-5.

[10] SEC. 20. Duties of attorneys.- It is the duty of an attorney:

(g) Not to encourage either the commencement or the continuance of an action or proceeding, or delay any man’s cause, from any corrupt motive or interest;

[11] Rollo, p. 5.

[12]Id. at 145-170.

[13] Id. at 147-154.

[14]Id. at 152-154.

[15] Id. at 671.

[16] Id. at 445-466.

[17] It reads:

15.03. A lawyer shall not represent conflicting interests.

[18] Rollo, pp. 455-456.

[19] Id. at 666.

[20] Id. at 680-689.

[21] Supra note 1; dated 5 September 2005.

[22] Id. at 716.

[23] Id. at 1129-1132; dated 29 November 2006.

[24] A.C. No. 6656, 4 May 2006, 489 SCRA 345.

[25] Rollo, pp. 1129-1130.

[26] Id. at 989-1071; dated 7 July 2006.

[27] Id. at 1067-1068.

[28] Id. at 1031.

[29] 126 Phil. 802 (1967).

[30] Id. at 806.

[31] Supra note 24.

[32] Id. at 348.

[33] *Artezuela v. Maderazo*, 431 Phil. 135, 141 (2002).

[34] *Frias v. Lozada*, A.C. No. 6656, 13 December 2005, 477 SCRA 393, 400.

[35] Agpalo, *THE CODE OF PROFESSIONAL RESPONSIBILITY FOR LAWYERS*, 1st Edition, Copyright 1991, p. 166, citing Canon 6, *Canons of Professional Ethics* and *U.S. v. Laranja*, 21 Phil. 500 (1912).

[36] *Hornilla v. Salunat*, 453 Phil. 108, 111 (2003).

[37] AGPALO, *THE CODE OF PROFESSIONAL RESPONSIBILITY FOR LAWYERS*, 1st Edition, Copyright 1991, p. 166, citing *Nombrado v. Hernandez*, 26 SCRA 13 (1968) and *Natam v. Capule*, 91 Phil. 640 (1952).

[38] KAUFFMAN, KENT D., *LEGAL ETHICS*, DELMAR LEARNING, COPYRIGHT 2004, pp. 174-175, 207.

[39] *Perez v. De la Torre*, A.C. No. 6160, 30 March 2006, 485 SCRA 551.

[40] AGPALO, *THE CODE OF PROFESSIONAL RESPONSIBILITY FOR LAWYERS*, 1st Edition, Copyright 1991, p. 167, citing *Nombrado v. Hernandez*, 26 SCRA 13 (1968), *Natam v. Capule*, 91 Phil. 640 (1952), *San Jose v. Cruz*, 57 Phil. 79 (1933) and *Hilado v. David*, 84 Phil. 569 (1949).

[41] Id. at 199, citing *Watkins v. Sedberry*, 261 U.S. 571, 67 L. ed. 802 (1923).

[42] Bun Siong Yao v. Aurelio, A.C. No. 7023, 30 March 2006, 485 SCRA 553, 560.

[43] 84 Phil. 569 (1972).

[44] Id. at 576.

[45] Gonzaga v. Atty. Villanueva, Jr., 478 Phil. 859 (2004).

[46] Hilado v. David, supra note 43 at 569, 577, citing Brown v. Miller, 52 App. D.C. 330; 286, F. 994 and Pierce v. Palmer (1910), 31 R. I. 432; 77 Atl., Ann Cas., 1912 S, 181.

[47] See Florida Bar v. Mastrilli, 614 So. 2d 1081 (Fla 1993), cited in KAUFFMAN, KENT D., LEGAL ETHICS, COPYRIGHT 2004, p. 164.

[48] ZITRIN, RICHARD A. AND LANGFORD CAROL M., LEGAL ETHICS IN THE PRACTICE OF LAW, MATTHEW BENDER AND COMPANY, INC., SECOND EDITION, p. 181.

[49] See Hornilla v. Salunat, 453 Phil. 108, 114 (2003).

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