VICTORIANO B. CARUAL, COMPLAINANT, VS. JUDGE VLADIMIR B. BRUSOLA, REGIONAL TRIAL COURT, BRANCH 6, LEGAZPI CITY, RESPONDENT.

A.M. No. RTJ-99-1500. October 20, 1999

Ponente: PUNO, J.

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PUNO, J.:

On August 14, 1996, complainant Victoriano Carual filed with the Office of the Ombudsman a sworn complaint[1] against respondent Judge Vladimir B. Brusola, Regional Trial Court, Branch 6, Legazpi City, for violation of the Code of Judicial Conduct and the Anti-Graft and Corrupt Practices Act (RA 3019). The complaint alleged that complainant's son, Francisco Carual, was the owner of a parcel of land measuring 3,607 square meters located at Barangay Fatima, Tabaco, Albay; that Francisco Carual gave complainant a special power of attorney to represent him in the civil action for quieting of title involving said lot; that complainant discovered that the house of Andres Bo had encroached a portion of said lot; that complainant sought the assistance of Atty. Julian Cargullo who wrote Andres Bo ordering him to remove his house from the lot; that Andres Bo engaged the legal services of respondent judge who, on June 11, 1995, wrote Atty. Cargullo stating that the lot in question had been sold to Crispin and Ursula Bo, landlord of Andres Bo; that respondent judge's act amounted to private practice of law, in violation of the Code of Judicial Conduct. Complainant also suspected that all the pleadings filed by Andres Bo in the civil case pending before RTC Branch 16, Tabaco, Albay involving said lot were prepared by respondent judge as the style of writing showed that they were drafted by a lawyer or judge. Complainant further alleged that respondent judge violated RA 3019 by being partial and giving undue favor to a private individual.

On October 21, 1996, the Office of the Ombudsman referred the complaint to the Office of the Court Administrator.[2]

On February 5, 1997, the Court required respondent judge to comment on the complaint.[3]

In his Comment[4] dated April 11, 1997, respondent judge denied the charges against him. He argued that a public officer or employee may be held liable for violation of Section 3(e) of RA 3019 when he causes any undue injury or gives any party any unwarranted benefit, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. He said that he could not have given any unwarranted benefit, advantage or preference to either complainant or Andres Bo in the discharge of his official, administrative or judicial functions as they had no pending case before his sala. Furthermore, he stated that since the civil case filed by complainant against Andres Bo was pending before Branch 16, RTC, Tabaco, Albay presided by Judge Caesar Bordeos and since the lot in question was outside his territorial jurisdiction, it was impossible for him to favor a party in the performance of his official, administrative or judicial function.

Respondent judge likewise denied the charge of violation of the Code of Judicial Conduct. He said that Andres Bo

did not approach him for legal assistance as he had his own counsel, Atty. Levi M. Ramirez. He explained that he wrote the letter to Atty. Cargullo dated June 11, 1995 not as counsel for a party but in the concept of an owner since he was the administrator of the property in question. He stated that he has been the administrator of the properties of the heirs of Victor Bocaya since 1976, long before his appointment to the Judiciary. Respondent judge submitted that his "management of the properties entrusted to him by his principal and attending to transferees of these properties when the same is or are claimed by other persons are x x x plain and simple acts of ownership and possession of any property owner."

Complainant filed a reply to respondent's comment on December 29, 1997. He reiterated his allegation that respondent judge has been engaging in private practice of law by preparing pleadings in connection with the cases involving the properties under his administration.[5]

On August 3, 1998, the Court referred the complaint to the Court of Appeals for investigation, report and recommendation.[6] The case was assigned to Justice Presbitero J. Velasco, Jr.

Justice Velasco conducted a hearing on May 7, 1999. He limited the investigation to the factual issue of whether respondent judge is engaging or has engaged in private practice of law.

The complainant presented two witnesses: complainant himself and Rodolfo Buban. The respondent, on the other hand, presented three witnesses: respondent himself, Judge Cesar Bordeos and Atty. Levi Ramirez. Justice Velasco summarized the testimonies of the witnesses as follows:

> "Complainant Victoriano Carual adopted his 'Sinumpaang Habla' dated August 14, 1996 as his direct testimony, to wit: that he was given a Special Power of Attorney by his son, Francisco Bueno Carual, to institute appropriate action involving a parcel of land located in Barangay Fatima, Tabaco, Albay, which the latter owned; that the case was originally assigned to Judge Bordeos and later transferred to Judge Cabredo in exchange for a criminal case from which the latter inhibited himself, (Ibid., pp. 37-42); that a certain Andres Bo constructed a house on said land seven or eight years ago; that Victoriano Carual caused said land to be surveyed and as a result thereof, it was shown that Andres Bo's house was actually encroaching on Francisco Bueno Carual's land; that he consulted a lawyer, Atty. Julian C. Cargullo, who in turn, wrote a letter to Andres Bo telling him to vacate the premises and that the latter would even be provided with money to assist him in his transfer; that Andres Bo consulted Judge Vladimir B. Brusola of Branch 6, City Court of Legazpi, Albay and the latter wrote a letter to Atty. Cargullo on June 11, 1995 and, that the acts of Judge Brusola constituted a violation of Republic Act 3019 (Anti-Graft and Corrupt Practices Act) and Code of Judicial [Conduct] (Exh. 'B'; Rollo, pp. 2-3) This 'Sinumpaang Habla' was prepared in the Office of the Ombudsman and complainant Carual was not assisted by Atty. Cargullo for reasons the latter did not disclose. (TSN, May 7, 1999, pp. 31-32)
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> "Upon cross-examination of complainant Carual, it was established that the letter of Judge Brusola dated June 11, 1995 preceded the institution of the complaint against Andres Bo. (Ibid., pp. 49-51) Carual also admitted that he did not see who prepared the pleadings but he can see that they were made by an intelligent person. Andres Bo could not have prepared the pleadings because he was neither educated nor knowledgeable. (Ibid., p. 53) As to which specific documents were similar or were prepared by one person, complainant Carual was referring to the letter of Judge Brusola dated June 11, 1995 and the Answer of Andres Bo in the civil case. (Ibid., p. 56)
>
> "Rodolfo Buban, complainant's witness, testified that respondent Judge Brusola was involved in a case involving a parcel of land described as Lot 1656. A certain Araceli Bocaya Centeno was claiming ownership over the same. Hence, a case was instituted to settle the dispute and the contending parties therein were Domingo Buban, witness' father, Cecilia Centeno and Ursula Bo. In 1974, respondent Judge Brusola represented Cecilia Centeno on said case. Presently, witness Rodolfo Buban is in possession of the land in dispute. However, he claims that his possession was threatened by Judge Brusola by virtue of a letter written

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by him on November 27, 1995. (Ibid., pp. 60-69) In this letter, Judge Brusola, as administrator, advised Leoncio Buenconsenjo, Barangay Captain of San Roque, Tabaco, Albay, that the witness, Rodolfo Buban, who was ejected from Lot 2367, is encouraging people to occupy Lot 1656 for a certain consideration or price. (Exh. 'F'; Rollo, p. 95)

"On cross-examination, witness Rodolfo Buban testified that the case involving Lot 1656 was instituted in 1974; that a certain Vladimir Brusola, then practicing lawyer, represented the Centenos and the Bos in said case; that a decision on said case was rendered in 1989 and the same was appealed to the Court of Appeals; that respondent Brusola was not yet a judge in 1989 when the case was decided; that when respondent Judge Brusola was appointed as a judge, another lawyer in the name of Aurora Benamira Parcia took over the case; and that nothing in the letter dated November 27, 1995 would show that Judge Brusola was doing any act of lawyering to the opponents of witness' father. (TSN, May 7, 1999, pp. 73-76) For the record, Judge Brusola was appointed as a judge on March 23, 1990 and took his oath on April 2, 1990. (Ibid., pp. 74-75) With respect to Lot No. 2367, witness Rodolfo Buban admitted that his wife owned a house thereon and said house was caused to be demolished by Celia Bocaya Centeno, the former client of Judge Brusola. (Ibid., pp. 78-81)

"On re-direct examination, witness Buban testified that when the letter dated November 27, 1995 was written, respondent Judge Brusola was already a judge and he represented himself as an administrator when he was already occupying said position. (Ibid., pp. 81-82)

"For his defense, private respondent Judge Brusola presented Judge Cesar A. Bordeos, Presiding Judge of the Regional Trial Court of Tabaco, Albay, Branch 16, and Atty. Levi Ramirez, counsel of Andres Bo, as witnesses.

"Judge Cesar Bordeos adopted the Affidavit he executed on February 23, 1999 as his direct testimony which stated that he is the judge of the court where Civil Case No. T-1815 is pending which is entitled 'Francisco Carual vs. Andres Bo, et al.' for Quieting of Title, Recovery of Possession, Preliminary Mandatory Injunction and Damages; that the counsel of record for the defendant is Atty. Levi Ramirez; that he personally knows Judge Brusola; and, that Judge Brusola did not approach him or talk to him about Civil Case No. T-1815 nor any other case and that he (Judge Brusola) does not meddle in any of the cases pending before him (Judge Bordeos). (Exh. '1'; Rollo, p. 130)

"On cross-examination, Judge Bordeos declared that he was already presiding judge in Civil Case No. T-1815 when the 'Answer' was filed by Andres Bo. According to Judge Bordeos' testimony, upon finding out that Andres Bo had no lawyer, he instructed his staff to get in touch with Andres Bo for him to hire one. In his testimony, it was also noted that after the "Answer" was filed, several other pleadings were submitted by Andres Bo, all of which were signed by Mr. Bo without the assistance of a lawyer. However, the filing of the pleadings was a prerogative of Andres Bo which the court could not refuse. The witness later issued an order to the defendant ordering him to submit pleadings signed by a lawyer, otherwise, he will be held in contempt. (TSN, May 7, 1999, pp. 105-112) As to the highly technical contents of the pleadings, Judge Bordeos testified that he did not know Andres Bo personally so he could not tell whether the pleadings were prepared by him or another person. (Ibid., pp. 114-117)

"Respondent's second witness, Atty. Levi M. Ramirez also adopted his Affidavit executed on March 18, 1999 as part of his direct testimony. Said affidavit stated that he is the counsel of record for defendants Andres Bo, et al. in Civil Case No. T-1815; that the pleadings filed by the defendants in said case were all prepared or caused to be prepared by him as counsel for the defendants and no other; and, that he personally knows Judge Brusola and that the latter did not interfere in the preparation or filing of any of the pleadings and in the manner the case should be handled. (Exh. '2'; Records, p. 131)

"Atty. Ramirez also testified that he prepared the 'Answer' and the 'Comment on Plaintiff's Motion for Production and Inspection of Documents,' both of which were filed and signed by Andres Bo. He prepared these pleadings without anybody's assistance, except that he elicited information from Mr. Bo. (TSN, May 7,

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1999, pp. 121-125) He stated that he entered his formal appearance on December 4, 1996 as counsel of Andres Bo only after the latter was able to make partial payments. Since the case was filed in Legazpi City and considering the distance from Tabaco to Legazpi City, he needed such partial payment to ensure that he would have money for his gasoline and initial appearance. Regarding the Answer filed by Andres Bo, Atty. Ramirez said that the former asked him to file the Answer, otherwise, he would be declared in default. This is the reason Atty. Ramirez accommodated Andres Bo. In the meantime, Andres Bo promised Atty. Ramirez that he would make the partial payments and the latter told him that only after payment will he formally enter his appearance as counsel. Atty. Ramirez personally knows Judge Brusola and has two or three cases before his sala. Andres and Ursula Bo told him that Judge Brusola is the administrator of the properties when he was still a practicing lawyer.

"On cross-examination, Atty. Ramirez reiterated that he was the one who prepared the pleadings signed by Andres Bo. Moreover, he stated that he never talked to Judge Brusola regarding the case from the time Ursula Bo went to his office up to the time he entered his appearance. The only occasion that he and Judge Brusola discussed the case was when the latter informed him that an administrative case was filed against him (Judge Brusola) regarding the preparation of the pleadings filed by Andres Bo. In response, Atty. Ramirez told Judge Brusola that he would be willing to testify that he was the one who prepared all the pleadings. (Ibid., pp. 142-143)

"Judge Brusola also submitted himself as his own witness and adopted his Affidavit executed on March 17, 1999 and his Comment to the Supreme Court as his direct testimony. He stated therein that he is the presiding judge of Regional Trial Court Branch 6, Legazpi City and the respondent in his administrative case; that neither Victoriano Carual nor Andres Bo has any case pending before his sala and he did not cause undue injury or gave unwarranted benefit, advantage or preference to either of these two individuals in the discharge of his official functions; that the case between complainant Carual and Andres Bo is pending before the Regional Trial Court of Tabaco, Albay, Branch 16 where Judge Cezar Bordeos is the presiding judge; that he confirmed that he did not interfere in the preparation and filing of the pleadings in Civil Case No. T-1815 nor did he render any legal assistance to any of the defendants therein, his interest being limited to his being an administrator of the property subject of said case. (Exh. '3'; Rollo, pp. 132-133)

"On cross-examination, Judge Brusola admitted that he was engaged in the practice prior to his appointment as a judge. As regards the administration of Bo's property, he did not find it necessary for him to withdraw as administrator because this is not required by law. Besides, it does not conflict with his duties and functions and the property is outside of his territorial jurisdiction. When he sent the letter to the Barangay Captain referring regarding Lot 1656, he was acting as administrator of the lot, not as judge nor a lawyer. Regarding Andres Bo's consultation with him, Judge Brusola explained that the former came to him because Atty. Cargullo, then complainant Carual's counsel, was asking for documents which were in his possession. He believed that it was within his prerogative as administrator of the property to contest any claim against the property being administered by him. Lastly, Judge Brusola clarified that while complainant Carual questions his involvement in the preparation of the pleadings filed in Civil Case No. T-1815, the fact remains that the latter did not see him prepare any of those pleadings. (TSN, May 7, 1999, pp. 149-150)[7]

After the hearing, complainant and respondent filed their respective memoranda.

After a thorough examination and evaluation of the testimonial and documentary evidence submitted by the parties, we find that respondent judge violated Canon 5 of the Code of Judicial Conduct which enjoins members of the bench to regulate their extra-judicial activities to minimize the risk of conflict with their judicial duties.

In his Comment to the administrative complaint, as well as in his testimony before the investigating Justice of the Court of Appeals, respondent judge admitted that he has been the administrator of the properties of the heirs of Victor Bocaya since 1976 and he did not resign from such position even after his appointment to the judiciary on March 23, 1990.[8] This was affirmed by the testimony of Rodolfo Buban that on November 27, 1995, respondent

judge, signing as administrator, wrote the Barangay Captain of San Roque, Tabaco, Albay to inform him that Buban had no right to lot 1656 of the Tabaco Cadastre.[9] This is a clear violation of Rule 5.06 of the Code of Judicial Conduct which provides:

> "Rule 5.06. A judge should not serve as the executor, administrator, trustee, guardian, or other fiduciary, except for the estate, trust, or person of a member of the immediate family, and then only if such service will not interfere with the proper performance of judicial duties. "Members of immediate family" shall be limited to the spouse and relatives within the second degree of consanguinity. As a family fiduciary, a judge shall not:
>
> (1) serve in proceedings that might come before the court of said judge; or
>
> (2) act as such contrary to Rules 5.02 to 5.05."

As a general rule, a judge is prohibited from serving as executor, administrator, trustee, guardian or other fiduciary. The only exception is when the estate or trust belongs to, or the ward is a member of his immediate family, and only if his service as executor, administrator, trustee, guardian or fiduciary will not interfere with the proper performance of his judicial duties. The Code has defined who may be considered as members of his immediate family and they are the spouse and relatives within the second degree of consanguinity. It does not appear in this case that Victor Bocaya or his heirs are members of respondent judge's immediate family.

We disagree with respondent's argument that the proscription refers only to judges acting as judicial administrator. The Code does not qualify the prohibition. The intent of the rule is to limit a judge's involvement in the affairs and interests of private individuals to minimize the risk of conflict with his judicial duties and to allow him to devote his undivided attention to the performance of his official functions. Judges have the duty to uphold the integrity and independence of the judiciary. When a member of the bench serves as administrator of the properties of private individuals, he runs the risk of losing his neutrality and impartiality, especially when the interest of his principal conflicts with that of the litigant who comes before his court.

We also find merit in complainant's contention that respondent's act of writing to Atty. Cargullo and defending the right of Andres Bo to possess the lot in dispute amounts to private practice of law. The letter[10] reads:

> "June 11, 1995
>
> "Atty. Julian C. Cargullo
>
> Bishop Ariola Drive
>
> Karanghan Blvd., Tabaco, Albay
>
> "Dear July:
>
> "This is in connection with your letter dated June 9, 1995 to Mr. Andres Bo of Fatima, Tabaco, Albay with respect to his occupancy of lot no. 7 Tabaco Cadastre.
>
> "Please be informed that Lot No. 7 was among those sold by Pantaleon Bueno and all his children to Victor Bocaya before the Japanese war which was in turn sold by the heirs of Victor Bocaya to the spouses Crispin Bo and Ursula Bo, landlord of Andres Bo and who instituted Andres Bo as the riceland tenant of their nearby lot 1656 and his house on lot no. 7 had been there since 1950. A copy of the document of sale is in my possession as the administrator of all the properties of the heirs of Victor Bocaya at San Roque, Tabaco, Albay. A copy of the sale was shown to Victoriano Carual during their confrontation at the office of the barangay captain of Fatima, Tabaco, Albay last Wednesday June 7, 1995.
>
> "I do hope this will clarify the matters. Mr. Victoriano Carual has no right whatsoever to lot no. 7 and his documents if any could not have been secured if not by fraud. The truth is that Mr. Victoriano Carual has never

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> set foot on any portion of lot no. 7 yet even up to now. His documents are reminiscent of the late 'Flores documents and titles.'
>
> "My best regards.
>
> Very truly yours,
>
> (sgd.)VLADIMIR B. BRUSOLA"

The tenor of the letter shows that respondent, as representative of Andres Bo, was defending the latter's rights over the disputed property. Respondent's act of representing and defending the interest of a private individual in the disputed property constitutes private practice of law. It has been ruled that "the practice of law is not limited to the conduct of cases in court or participation in court proceedings but also includes preparation of pleadings or papers in anticipation of a litigation, giving advice to clients or persons needing the same, etc."[11]

Under Section 35, Rule 138 of the Revised Rules of Court, judges are prohibited from engaging in the private practice of law or giving professional advice to clients. This is reiterated in Rule 5.07 of the Code of Judicial Conduct. As in Rule 5.06, this rule is also based on public policy because the rights, duties, privileges and functions of the office of an attorney-at-law are inherently incompatible with the high official functions, duties, powers, discretion and privileges of a judge. It also aims to ensure that judges give their full time and attention to their judicial duties, prevent them from extending special favors to their own private interests and assure the public of their impartiality in the performance of their functions. These objectives are dictated by a sense of moral decency and desire to promote the public interest.[12]

Respondent's pretext that he wrote the letter as administrator of the property is belied by the records. It appears that the property in question was originally owned by a certain Pantaleon Bueno. Before the Japanese War, Bueno sold the land to Victor Bocaya who was later succeeded by his heirs -- Cecilia Centeno, Victoria Jocson and Antonio Bocaya. The property was later transferred to Crispin and Ursula Bo who instituted Andres Bo as their tenant. On March 20, 1976, Cecilia Centeno appointed respondent judge who was then a practicing lawyer as administrator of their properties.[13] It is therefore clear that at the time respondent judge wrote to Atty. Cargullo, the land in dispute was no longer under his administration as ownership thereof had already been transferred by the heirs to the Bo spouses. The terms of the General Power of Attorney provide that respondent's office as administrator shall extend only over authority to interfere in the dispute between complainant and Andres Bo unless he did act as counsel and representative of Andres Bo.

Nonetheless, it has not been proved that respondent judge has regularly engaged in private practice. Although complainant suspects that it was respondent who prepared the pleadings filed by Andres Bo and Ursula Bo in connection with the civil case for quieting of title pending before the RTC of Tabaco, Albay, such suspicion has remained a suspicion and was not proven to be a fact. There is no direct evidence, testimonial or documentary, to show that respondent judge prepared said pleadings. Complainant admitted during the hearing that he did not see who prepared the pleadings and he merely presumed based on their content and appearance that they were prepared by an intelligent person.[14] Neither did he present any witness to testify that respondent judge authored these pleadings. Complainant's documentary evidence consists of respondent's letter to Atty. Cargullo dated June 11, 1995,[15] respondent's letter to Mr. Leoncio Buenconsejo dated November 27, 1995,[16] Answer signed by Andres Bo and filed in relation to the civil case,[17] and Comment on Plaintiff's Motion for Production and Inspection of Documents[18] also signed by Andres Bo and filed in relation to the civil case. Although it appears that these documents were written by one who has knowledge and training in the law, they do not conclusively show that it was respondent judge who prepared them. These documents do not show any distinctive style of writing peculiar to respondent judge. Even the similarity in the type of print used in these documents do not prove

complainant's allegation for it is of judicial notice that computers do produce the same types of print.

As regards the charge of violation of RA 3019, the records show that complainant did not adduce any evidence to show that respondent judge has been partial to a party or has given any unwarranted benefit or favor to a party in the exercise of his judicial functions.

IN VIEW WHEREOF, a FINE of FIVE THOUSAND PESOS (P5,000.00) is hereby imposed upon respondent judge for violation of the Code of Judicial Conduct, with warning that the commission of similar or other offenses shall be dealt with more severely. Respondent judge is further ordered to cease from serving as administrator of the properties of private individuals except those allowed by the Code.

SO ORDERED.

Davide, Jr., C.J., (Chairman), and Pardo, J., concur.

Kapunan, and Ynares-Santiago, JJ., on official business abroad.

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[1] Rollo, p. 1.

[2] Ibid.

[3] Rollo, p. 7.

[4] Rollo, pp. 11-12.

[5] Rollo, pp. 64-66.

[6] Rollo, p. 104.

[7] Report submitted by Justice Presbitero Velasco, Jr., pp. 3-9.

[8] TSN, May 7, 1999, pp. 149-151.

[9] TSN, May 7, 1999, p. 69; Exhibit "F" and "F-1", Rollo, p. 95.

[10] Exh. "D", Rollo, p. 6.

[11] Dia-Anonuevo v. Bercacio, 68 SCRA 81 (1975).

[12] Omico Mining and Industrial Corp. v. Vallejos, 63 SCRA 285 (1975).

[13] See Exhibit "C", Rollo, pp. 16-17 and Exhibit "D", Rollo, p. 6.

[14] TSN, May 7, 1999, p. 53.

[15] Exhibit "D".

[16] Exhibit "F".

[17] Exhibit "I".

[18] Exhibit "J".

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