

**MABINI COLLEGES, INC. REPRESENTED BY MARCEL N. LUKBAN,
ALBERTO I. GARCIA, JR., AND MA. PAMELA ROSSANA A. APUYA,
COMPLAINANT, VS. ATTY. JOSE D. PAJARILLO, RESPONDENT.**

A.C. No. 10687. July 22, 2015

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

Before us is a verified complaint[1] for disbarment against respondent Atty. Jose D. Pajarillo for allegedly violating Canon 15, Rule 15.03 of the Code of Professional Responsibility which prohibits a lawyer from representing conflicting interests and Canon 15 of the same Code which enjoins a lawyer to observe candor, fairness, and loyalty in all his dealings and transactions with clients.

The salient facts of the case follow:

In 1995, the complainant, Mabini Colleges, Inc., had a Board of Trustees which was divided into two opposing factions. The first faction, called the Adeva Group, was composed of Romulo M. Adeva, Lydia E. Cacawa, Eleodoro D. Bicierro, and Pilar I. Andrade. The other faction, called the Lukban Group, was composed of Justo B. Lukban, Luz I. Garcia, Alice I. Adeva, and Marcel N. Lukban.

In 1996, the complainant appointed the respondent as its corporate secretary with a total monthly compensation and honorarium of P6,000.

On March 29, 1999, the Adeva Group issued an unnumbered Board Resolution which authorized Pilar I. Andrade, the Executive Vice President and Treasurer of the complainant at that time, and Lydia E. Cacawa, the Vice President for Administration and Finance, to apply for a loan with the Rural Bank of Paracale (RBP), Daet Branch, Camarines Norte in favor of the complainant.

On May 12, 1999, the Lukban Group sent a letter to RBP to oppose the loan application because the Adeva Group appointed Librado Guerra and Cesar Echano, who were allegedly not registered as stockholders in the Stock and Transfer Book of the complainant, as members of the Board of Trustees. The Lukban Group also alleged that the complainant was having financial difficulties.

On May 14, 1999, respondent sent a letter to RBP to assure the latter of complainant's financial capacity to pay the loan.

On July 13, 1999, RBP granted the loan application in the amount of P200,000 which was secured by a Real Estate Mortgage over the properties of the complainant.

On September 27, 1999, the Securities and Exchange Commission (SEC) issued an Order which nullified the appointment of Librado Guerra and Cesar Echano by the Adeva Group as members of the Board of Trustees of the complainant. As a result, complainant sent a letter to RBP to inform the latter of the SEC Order.

On October 19, 1999, RBP sent a letter to the complainant acknowledging receipt of the SEC Order and

informing the latter that the SEC Order was referred to RBP's legal counsel, herein respondent. The complainant alleged that it was only upon receipt of such letter that it became aware that respondent is also the legal counsel of RBP.

On April 18, 2000, complainant and RBP increased the loan to P400,000.

On April 23, 2002, RBP moved to foreclose the Real Estate Mortgage.

On May 28, 2002, complainant filed a complaint for Annulment of Mortgage with a Prayer for Preliminary Injunction against RBP. Respondent entered his appearance as counsel for RBP.

On September 2, 2011, complainant filed the present complaint for disbarment against the respondent for allegedly representing conflicting interests and for failing to exhibit candor, fairness, and loyalty.

Respondent raised three defenses against the complaint for disbarment. First, respondent argued that Marcel N. Lukban, Alberto I. Garcia Jr., and Ma. Pamela Rossana Apuya cannot represent the complainant in this disbarment case because they were not duly authorized by the Board of Directors to file the complaint. Second, respondent claimed that he is not covered by the prohibition on conflict of interest which applies only to the legal counsel of complainant. Respondent argued that he merely served as the corporate secretary of complainant and did not serve as its legal counsel. Third, respondent argued that there was no conflict of interest when he represented RBP in the case for annulment of mortgage because all the documents and information related to the loan transaction between RBP and the complainant were public records. Thus, respondent claimed that he could not have taken advantage of his position as the mere corporate secretary of the complainant.

On February 14, 2013, the Investigating Commissioner issued a Report and Recommendation[2] finding respondent guilty of representing conflicting interests and recommending that respondent be suspended from the practice of law for at least one year. The Investigating Commissioner noted that respondent appeared for RBP in the case for annulment of mortgage filed by his former client, the complainant herein. The Investigating Commissioner cited cash vouchers[3] from 1994 to 2001 showing that respondent was paid by complainant for his retained legal services. According to the Investigating Commissioner, these vouchers debunk respondent's claim that the complainant merely appointed him as its corporate secretary. The Investigating Commissioner also held that the personality of complainant's representatives to file this administrative case is immaterial since proceedings for disbarment, suspension or discipline of attorneys may be taken by the Supreme Court *motu proprio* or by the Integrated Bar of the Philippines (IBP) upon the verified complaint of any person.

On June 21, 2013, the Board of Governors of the IBP issued Resolution No. XX-2013-770[4] which affirmed the findings of the Investigating Commissioner and imposed a penalty of suspension from the practice of law for one year against respondent.

On May 3, 2014, the Board of Governors of the IBP issued Resolution No. XXI-2014-290[5] which denied the motion for reconsideration filed by respondent.

The issue in this case is whether respondent is guilty of representing conflicting interests when he entered his appearance as counsel for RBP in the case for annulment of mortgage filed by complainant against RBP.

We rule in the affirmative. We thus affirm the Report and Recommendation of the Investigating Commissioner, and Resolution Nos. XX-2013-770 and XXI-2014-290 of the IBP Board of Governors. Indeed, respondent represented conflicting interests in violation of Canon 15, Rule 15.03 of the Code of Professional Responsibility which provides that "[a] lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts."

This rule prohibits a lawyer from representing new clients whose interests oppose those of a former client in any manner, whether or not they are parties in the same action or on totally unrelated cases.[6] Based on the principles of public policy and good taste, this prohibition on representing conflicting interests enjoins lawyers not only to keep inviolate the client's confidence, but also to avoid the appearance of treachery and double-dealing for only then can litigants be encouraged to entrust their secrets to their lawyers, which is of paramount importance in the administration of justice.[7] In *Maturan v. Gonzales*[8] we further explained the rationale for the prohibition:

The reason for the prohibition is found in the relation of attorney and client, which is one of trust and confidence of the highest degree. A lawyer becomes familiar with all the facts connected with his client's case. He learns from his client the weak points of the action as well as the strong ones. Such knowledge must be considered sacred and guarded with care. No opportunity must be given him to take advantage of the client's secrets. A lawyer must have the fullest confidence of his client. For if the confidence is abused, the profession will suffer by the loss thereof.

Meanwhile, in *Hornilla v. Salunat*,[9] we explained the test to determine the existence of conflict of interest:

There is conflict of interest when a lawyer represents inconsistent interests of two or more opposing parties. The test is "whether or not in behalf of one client, it is the lawyer's duty to fight for an issue or claim, but it is his duty to oppose it for the other client. In brief, if he argues for one client, this argument will be opposed by him when he argues for the other client." This 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. Also, there is conflict of interests if the acceptance of the new retainer will require the attorney to perform an act which will injuriously affect his first client in any matter in which he represents him and also whether he will be called upon in his new relation to use against his first client any knowledge acquired through their connection. Another test of the inconsistency of interests 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.

The rule prohibiting conflict of interest applies to situations wherein a lawyer would be representing a client whose interest is directly adverse to any of his present or former clients.[10] It also applies when the lawyer represents a client against a former client in a controversy that is related, directly or indirectly, to the subject matter of the previous litigation in which he appeared for the former client.[11] This rule applies regardless of the degree of adverse interests.[12] What a lawyer owes his former client is to maintain inviolate the client's confidence or to refrain from doing anything which will injuriously affect him in any matter in which he previously represented him.[13] 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.[14]

Applying the foregoing to the case at bar, we find that respondent represented conflicting interests when he served as counsel for RBP in the case for annulment of mortgage filed by the complainant, respondent's former client, against RBP.

The finding of the Investigating Commissioner that respondent was compensated by complainant for his retained legal services is supported by the evidence on record, the cash vouchers from 1994 to 2001. Clearly, complainant was respondent's former client. And respondent appeared as counsel of RBP in a case filed by his former client against RBP. This makes respondent guilty of representing conflicting interests since respondent failed to show any written consent of all concerned (particularly the complainant) given after a full disclosure of the facts representing conflicting interests.[15]

We also note that the respondent acted for the complainant's interest on the loan transaction between RBP and the

complainant when he sent a letter dated May 14, 1999 to RBP to assure the latter of the financial capacity of the complainant to pay the loan. But as counsel for RBP in the case for annulment of mortgage, he clearly acted against the interest of the complainant, his former client.

Contrary to the respondent's claim, it is of no moment that all the documents and information in connection with the loan transaction between RBP and the complainant were public records. In *Hilado v. David*,^[16] we laid down the following doctrinal pronouncements:

The principle which forbids an attorney who has been engaged to represent a client from thereafter appearing on behalf of the client's opponent applies equally even though during the continuance of the employment nothing of a confidential nature was revealed to the attorney by the client. (*Christian vs. Waialua Agricultural Co.*, 30 Hawaii, 553, Footnote 7, C. J. S., 828.)

Where it appeared that an attorney, representing one party in litigation, had formerly represented the adverse party with respect to the same matter involved in the litigation, the court need not inquire as to how much knowledge the attorney acquired from his former client during that relationship, before refusing to permit the attorney to represent the adverse party. (*Brown vs. Miller*, 52 App. D. C. 330; 286, F. 994.)

In order that a court may prevent an attorney from appearing against a former client, it is unnecessary that the court ascertain in detail the extent to which the former client's affairs might have a bearing on the matters involved in the subsequent litigation on the attorney's knowledge thereof. (*Boyd vs. Second Judicial Dist. Court*, 274 P., 7; 51 Nev., 264.)

This rule has been so strictly enforced that it has been held that an attorney, on terminating his employment, cannot thereafter 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. (*Pierce vs. Palmer* [1910], 31 R. I., 432; 77 Atl., 201, Ann. Cas., 1912S, 181.)

Thus, the nature and extent of the information received by the lawyer from his client is irrelevant in determining the existence of conflict of interest.

Finally, we agree with the Investigating Commissioner that a complaint for disbarment is imbued with public interest which allows for a liberal rule on legal standing. Under Section 1, Rule 139-B of the Rules of Court, "[p]roceedings for the disbarment, suspension or discipline of attorneys may be taken by the Supreme Court *motu proprio*, or by the Integrated Bar of the Philippines (IBP) upon the verified complaint of any person." Thus, in the present case, we find that Marcel N. Lukban, Alberto I. Garcia Jr., and Ma. Pamela Rossana A. Apuya can institute the complaint for disbarment even without authority from the Board of Directors of the complainant.

WHEREFORE, premises considered, Resolution No. XX-2013-770 and Resolution No. XXI-2014-290 of the IBP Board of Governors imposing a penalty of suspension from the practice of law for one year against respondent Atty. Jose D. Pajarillo are hereby AFFIRMED.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Perez,^[*]and Jardeleza, JJ., concur.

[*] Designated Acting Member in lieu of Associate Justice Bienvenido L. Reyes, per Special Order No. 2084 dated June 29, 2015.

[1] Rollo, pp. 2-11.

[2] Id. at 375-384.

- [3] Id. at 59-126.
- [4] Id. at 374.
- [5] Id. at 372.
- [6] Orola v. Ramos, A.C. No. 9860, September 11, 2013, 705 SCRA 350, 357.
- [7] Quiambao v. Bamba, 505 Phil. 126, 133 (2005).
- [8] 350 Phil. 882, 887 (1998).
- [9] 453 Phil. 108, 111-112(2003).
- [10] Samson v. Era, A.C. No. 6664, July 16,2013,701 SCRA 241, 251.
- [11] Pormento, Sr. v. Pontevedra, 494 Phil. 164, 179 (2005).
- [12] See Nakpil v. Valdes, 350 Phil. 412, 427 (1998).
- [13] Pormento, Sr. v. Pontevedra, supra note 11, at 180.
- [14] Heirs of Lydio Falame v. Bagnio, 571 Phil. 428, 441 (2008).
- [15] Rollo, p. 383.
- [16] 84 Phil. 569, 577-578 (1949).

July 27, 2015

N O T I C E O F J U D G M E N T

Sirs / Mesdames:

Please take notice that on July 22, 2015 a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on July 27, 2015 at 1:55 p.m.

Very truly yours,

(SGD.)

WILFREDO V. LAPITAN

Division Clerk of Court

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