

**RAMONA L. VDA. DE ALISBO AND NORBERTO S. ALISBO,
PETITIONERS, VS. ATTY. BENITO JALANDOON, SR., RESPONDENT.**

A.C. No. 1311. July 18, 1991

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

A verified complaint for disbarment was filed with then Secretary of National Defense Juan Ponce Enrile on January 2, 1974, by Ramona L. Vda. de Alisbo and Norberto S. Alisbo against their former counsel, Attorney Benito Jalandoon, Sr., charging him with deceit, malpractice, and professional infidelity. The complaint was referred to this Court on February 5, 1974.

After the complainants had submitted the required number of copies of their complaint, the respondent was ordered to file his answer thereto which he did on June 5, 1974.

On August 20, 1974, the complainants filed a reply.

On August 28, 1974, the Court referred the complaint to the Solicitor General for investigation report and recommendation. On February 2, 1990, or after sixteen (16) years, the Solicitor General submitted his report to the Court, together with the transcripts of stenographic notes taken at the investigation and folders of exhibits submitted by the parties.

The facts of the case, as found by the Solicitor General, are the following:

On March 16, 1970, Ramon Alisbo engaged respondent Attorney Benito Jalandoon, Sr., as his counsel to commence an action to recover his share of the estate of the deceased spouses Catalina Sales and Restituto Gozuma which had been adjudicated to him under the judgment dated April 29, 1961 of the Court of First Instance of Negros Oriental, in Civil Case No. 4963, because Alisbo failed to file a motion for execution of the judgment in his favor within the reglementary five-year period (Sec. 6, Rule 39, Rules of Court). The salient provisions of the Contract for Professional Services (Exhibit A) between Alisbo and Attorney Jalandoon were the following:

1. That respondent will decide whether or not to file a suit for the recovery of Ramon Alisbo's share or claim;
2. That respondent will shoulder all expenses of litigations; and
3. As attorney's fees, respondent will be paid fifty per cent (50%) of the value of the property recovered.

On April 18, 1970, respondent prepared a complaint for revival of the judgment in Civil Case No. 4963 but filed it only on September 12, 1970 or five (5) months later. It was docketed as Civil Case No. 9559, entitled: "Ramon S. Alisbo, Teotimo S. Alisbo and Pacifico S. Alisbo vs. Carlito Sales, in his own capacity and as Judicial Administrator of the deceased Pedro Sales." The complaint was signed by respondent alone. However, no sooner had he filed the complaint than he withdrew it and filed in its stead (on the same day and in the same case) a second complaint dated August 31, 1970, with Ramon S. Alisbo as the lone plaintiff, praying for the same relief.

Teotimo S. Alisbo and Pacifico S. Alisbo were excluded as plaintiffs and were impleaded as defendants instead. Attorneys Bernardo B. Pablo and Benito Jalandoon, Sr. (herein respondent) signed as counsel.

On December 8, 1971, an amended complaint was filed wherein the plaintiffs were: Ramon S. Alisbo, assisted by his judicial guardian, Norberto S. Alisbo, and eight (8) others, namely: Pacifico S. Alisbo, Ramona Vda. de Alisbo and Ildefonso, Evangeline, Teotimo, Jr., Reynaldo, Elizabeth and Teresita, all surnamed Alisbo. The amended complaint was signed by Attorney Bernardo B. Pablo alone as counsel of the plaintiffs.

On August 21, 1973, defendant Carlito Sales filed a Motion to Dismiss the complaint on the ground that the action for revival of judgment in Civil Case No. 4963 had already prescribed (Exh. 21). Plaintiffs filed an Opposition to the Motion to Dismiss (Exh. 22).

On October 3, 1973, the Court of First Instance of Negros Occidental dismissed the complaint on the ground of prescription as the judgment in Civil Case No. 4963 became final on May 30, 1961 yet, and, although a complaint for revival of said judgment was filed by Ramon Alisbo on September 12, 1970, before the ten-year prescriptive period expired, that complaint was null and void for Ramon Alisbo was insane, hence, incompetent and without legal capacity to sue when he instituted the action. The subsequent filing of an Amended Complaint on December 8, 1972, after the statutory limitation period had expired, was too late to save the plaintiff's right of action. Thereafter, nothing more was done by any of the parties in the case.

On January 2, 1974, the complainants charged respondent Attorney Benito Jalandoon, Sr. with having deliberately caused the dismissal of Civil Case No. 9559 and with having concealed from them the material fact that he had been the former legal counsel of Carlito Sales, their adversary in the probate proceedings. The respondent filed a general denial of the charges against him.

When Ramon S. Alisbo engaged the services of Attorney Jalandoon to enforce the decision in Civil Case No. 4963, that decision was already nine (9) years old, hence, it could no longer be executed by mere motion. (Sec. 6, Rule 39, Rules of Court). Complainants had only about a year left within which to enforce the judgment by an independent action.

Ramon Alisbo was already insane or incompetent when he hired Attorney Jalandoon to file Civil Case No. 9559 for him. Attorney Jalandoon concealed from Alisbo the fact that he (Atty. Jalandoon) had been the former counsel of Carlito Sales in the probate proceedings where Alisbo and Sales had litigated over their shares of the inheritance.

However, according to Attorney Jalandoon, it was only on October 6, 1972, when Civil Case No. 9559 was called for pre-trial, that he discovered his previous professional relationship with Sales. At that time, the ten-year prescriptive period for revival of the judgment in favor of Alisbo had already expired. He thereupon asked Alisbo's permission to allow him (Jalandoon) to withdraw from the case. He also informed the court about his untenable position and requested that he be allowed to retire therefrom. His request was granted.

In his report to the Court, the Solicitor General made the following observations:

"Evident from the foregoing is the fact that in handling the case for Ramon S. Alisbo which eventually led to its dismissal, respondent committed several errors, among which are:

"1) He did not verify the real status of Ramon Alisbo before filing the case. Otherwise, his lack of capacity to sue would not have been at issue.

"2) He postponed the motion to revive judgment and gave way instead to a motion to resolve pending incidents in Civil Case 4963. In doing so, he frittered away precious time.

"3) He dropped Ramon Alisbo's co-plaintiffs and impleaded them as defendants. Otherwise, the complaint would have been defective only in part.

"Had not respondent committed the above mistakes, Civil Case No. 9559 in all probability would not have been dismissed on the ground of prescription." (pp. 9-10, Solicitor General's Report.)

While the Solicitor General does not believe that Attorney Jalandon's mistakes in handling Alisbo's case were deliberate or made with malice aforethought because there is no "proof of collusion or conspiracy between respondent and those who would benefit from the dismissal of Civil Case No. 9559 x x x and that, on the other hand, respondent stood to gain substantially (50% of the amount recovered) if he had succeeded in having the judgment revived and executed" (pp. 10-11, Solicitor General's Report), still those errors are so gross and glaring that they could not have resulted from mere negligence or lack of due care.

Attorney Jalandon's pretense that he did not know before the pretrial that the Sales defendants had been his clients in the past, is unbelievable because:

1. Before he filed the complaint for revival of judgment, he had had several interviews with Ramon S. Alisbo and Norberto Alisbo regarding Civil Case No. 4963.
2. He must have done some research on the court records of Civil Case No. 4963, so he could not have overlooked his own participation in that case as counsel for Carlito Sales, et al.
3. To prepare the complaint for revival of judgment (Civil Case No. 9559), he had to inform himself about the personal circumstances of the defendants-Carlito Sales, et al. The fact that they had been his clients could not have eluded him.

In view of his former association with the Saleses, Attorney Jalandon, as a dutiful lawyer, should have declined the employment proffered by Alisbo on the ground of conflict of interest. Had he done that soon enough, the Alisbos (herein complainants) would have had enough time to engage the services of another lawyer and they would not have lost their case through prescription of the action.

The actuations of respondent attorney violated Paragraphs 1 and 2, No. 6 of the Canons of Professional Ethics which provide:

"6. ADVERSE INFLUENCE AND CONFLICTING INTEREST

"It is the duty of a lawyer at the time of retainer to disclose to the client all the circumstances of his relations to the parties, and in any interest in or with the controversy, which might influence the client in the selection of counsel.

"It is unprofessional to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts. Within the meaning of this canon, a lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose." (pp. 14-15, Solicitor General's Report.)

The impression we gather from the facts is that Attorney Jalandon used his position as Alisbo's counsel precisely to favor his other client, Carlito Sales, by delaying Alisbo's action to revive the judgment in his favor and thereby deprive him of the fruits of his judgment which Attorney Jalandon, as Sales' counsel, had vigorously opposed. Thus, although Atty. Jalandon prepared Alisbo's complaint for revival of judgment on April 18, 1970, he delayed its filing until September 12, 1970. He postponed filing the action by asking the Court instead to resolve pending incidents in said Civil Case No. 4963. By doing that, he frittered away what little time was left before the action would prescribe. The original complaint which he filed in the names of Ramon Alisbo and his brothers was only partially defective because of Ramon's incompetence. By dropping the other plaintiffs, leaving alone the

incompetent Ramon to prosecute the action, respondent made the second complaint wholly defective and ineffectual to stop the running of the prescriptive period.

After filing the complaint, Attorney Jalandon sat on the case. While he allegedly found out about Ramon Alisbo's insanity on July 17, 1971 only, he amended the complaint to implead Alisbo's legal guardian as plaintiff on December 8, 1971 only, or almost five (5) months later. By that time the prescriptive period had run out.

The surrounding circumstances leave us with no other conclusion than that attorney Jalandon, betrayed his client Ramon Alisbo's trust and did not champion his cause with that whole-hearted fidelity care and devotion that a lawyer is obligated to give to every case that he accepts from a client. There is more than simple negligence resulting in the extinguishment and loss of his client's right of action; there is a hint of duplicity and lack of candor in his dealings with his client, which call for the exercise of this Court's disciplinary power.

The Honorable Solicitor General who conducted the investigation of this case found respondent Attorney Benito Jalandon, Sr. guilty of serious misconduct and infidelity. Although the Solicitor General recommended the suspension of respondent Attorney Benito Jalandon Sr. from the practice of law for a period of one (1) year, the Court, after due deliberation, decided to suspend him for a period of two (2) years from the finality of this decision.

IT IS SO ORDERED.

Fernan, C.J., Narvasa, Gutierrez, Jr., Cruz, Paras, Padilla, Bidin, Sarmiento, Medialdea, Regalado, and Davide, Jr., JJ., concur.

Feliciano, J., see separate opinion.

Melencio-Herrera, J., joins Justice Feliciano in his dissent.

Gancayco, J., on leave.

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Concurring and Dissenting

Feliciano, J.:

I agree with the conclusion of the Court that respondent Atty. Benito Jalandon, Sr. was guilty of serious misconduct and infidelity. I, however, believe that the penalty of suspension for period of two (2) years from the practice of law is not commensurate with the very serious character of the misconduct and infidelity of which the Court has found him guilty.

That misconduct was not an ordinary act of placing himself in a conflict of interest situation. Respondent attorney in this case not only acted where he had a clear conflict of interest but also, and worst, so acted as to in effect destroy the legal rights which pertained to the complainants. As pointed out by the Court, respondent attorney delayed the filing of the complaint for the Alisbos for revival of judgment and

“by doing that, he [respondent attorney] frittered away what little time was left before the action would prescribe. The original complaint which he filed in the names of Ramon Alisbo and his brothers was only partially defective because of Ramon’s incompetence. By dropping the other plaintiffs leaving alone the incompetent Ramon to prosecute the action, respondent made the second complaint wholly defective and ineffectual to stop the running of the prescriptive period.”

Thus, there was here a utilization of the lawyer's craft and profession to defeat and dissolve the rights of one client for the benefit of the other client. This is infidelity to a client's cause in a particularly aggravated form, the use of the professional knowledge and technique deliberately to harm a client. Those who deal with members of the legal profession have the right to expect not just a reasonable amount of professional learning and competence but also whole-hearted loyalty to the client's cause, of course, within the bounds of law. A client must be able to deal with his attorney free from the intolerable apprehension that such attorney may, at some other time, turn around, not just to betray the client's confidence, but also deliberately to destroy the very rights that the client went to him in the first place to defend and prosecute.

I believe that the penalty justly merited by respondent in this case is suspension from the practice of law for five (5) years or outright disbarment and vote accordingly.

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