

ELESIO C. PORMENTO, SR., COMPLAINANT, VS. ATTY. ALIAS A. PONTEVEDRA, RESPONDENT.

A.C. NO. 5128. March 31, 2005

Ponente: AUSTRIA-MARTINEZ, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/a-c-no-5128/>

AUSTRIA-MARTINEZ, J.:

In a verified Complaint[2] dated August 7, 1999, Elesio C. Pormento, Sr. charged Atty. Elias A. Pontevedra with malpractice and misconduct, praying that on the basis of the facts alleged therein, respondent be disbarred.

Complainant alleges that between 1964 and 1994, respondent is his family's legal counsel having represented him and members of his family in all legal proceedings in which they are involved. Complainant also claims that his family's relationship with respondent extends beyond mere lawyer-client relations as they gave respondent moral, spiritual, physical and financial support in his different endeavors.[3]

Based on the allegations in the complaint, the rift between complainant and respondent began when complainant's counterclaim in Civil Case No. 1648 filed with the Regional Trial Court of Bacolod City was dismissed. Complainant claims that respondent, who was his lawyer in the said case, deliberately failed to inform him of the dismissal of his counterclaim despite receipt of the order of dismissal by the trial court, as a result of which, complainant was deprived of his right to appeal said order. Complainant asserts that he only came to know of the existence of the trial court's order when the adverse party in the said case extrajudicially foreclosed the mortgage executed over the parcel of land which is the subject matter of the suit. In order to recover his ownership over the said parcel of land, complainant was constrained to hire a new lawyer as Atty. Pontevedra refused to institute an action for the recovery of the subject property.[4]

Complainant also claims that in order to further protect his rights and interests over the said parcel of land, he was forced to initiate a criminal case for qualified theft against the relatives of the alleged new owner of the said land. Respondent is the counsel of the accused in said case. Complainant claims that as part of his defense in said criminal case, respondent utilized pieces of confidential information he obtained from complainant while the latter is still his client.[5]

In a separate incident, complainant claims that in 1967, he bought a parcel of land located at Escalante, Negros Occidental. The Deed of Declaration of Heirship and Sale of said land was prepared and notarized by respondent. Since there was another person who claims ownership of the property, complainant alleges that he heeded respondent's advice to build a small house on the property and to allow his (complainant's) nephew and his family to occupy the house in order for complainant to establish his possession of the said property. Subsequently, complainant's nephew refused to vacate the property prompting the former to file an ejectment case with the Municipal Trial Court of Escalante, Negros Occidental, docketed as Civil Case No. 528. Respondent acted as the counsel of complainant's nephew.[6]

Complainant contends that respondent is guilty of malpractice and misconduct by representing clients with conflicting interests and should be disbarred by reason thereof.[7]

In his Comment,[8] respondent contends that he was never a direct recipient of any monetary support coming from the complainant. Respondent denies complainant's allegation that he (respondent) did not inform complainant of the trial court's order dismissing the latter's counterclaim in Civil Case No. 1648. Respondent claims that within two days upon his receipt of the trial court's order of dismissal, he delivered to complainant a copy of the said order, apprising him of its contents. As to his representation of the persons against whom complainant filed criminal cases for theft,[9] respondent argues that he honestly believes that there exists no conflict between his present and former clients' interests as the cases he handled for these clients are separate and distinct from each other. He further contends that he took up the cause of the accused in the criminal cases filed by complainant for humanitarian considerations since said accused are poor and needy and because there is a dearth of lawyers in their community. With respect to the case for ejectment filed by complainant against his nephew, respondent admits that it was he who notarized the deed of sale of the parcel of land sold to complainant. However, he contends that what is being contested in the said case is not the ownership of the subject land but the ownership of the house built on the said land.[10]

On December 21, 1999, complainant filed a Reply to respondent's Comment.[11]

On January 19, 2000, the Court referred the instant case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.[12]

On February 18, 2002, respondent filed a Rejoinder to complainant's Reply adding that the instant complaint was orchestrated by complainant's son who wanted political vengeance because he lost the vice-mayoralty post to respondent during the 1988 local elections.[13]

On February 20, 2002, complainant filed a Sur-Rejoinder to respondent's Rejoinder.[14]

Thereafter, the parties filed their respective Position Papers,[15] after which the case was deemed submitted for resolution.

In his Report and Recommendation dated February 20, 2004, Investigating Commissioner Agustinus V. Gonzaga found respondent guilty of violating Rule 15.03, Canon 15 of the Code of Professional Responsibility. He recommended that respondent be meted the penalty of suspension for one month.

In a minute Resolution passed on July 30, 2004, the IBP Board of Governors resolved to annul and set aside the recommendation of the Investigating Commissioner and instead approved the dismissal of the complaint for lack of merit, to wit:

RESOLUTION NO. XVI-2004-387

Adm. Case No. 5128

Elesio C. Pormento, Sr., vs. Atty. Elias A. Pontevedra

RESOLVED to ANNUL and SET ASIDED [sic], as it is hereby ANNULED and SET ASIDE, the Recommendation of the Investigating Commission, and to APPROVE the DISMISSAL of the above-entitled case for lack of merit of the complaint.

We do not agree with the dismissal of the complaint.

At the outset, we reiterate the settled rule that in complaints for disbarment, a formal investigation is a mandatory requirement which may not be dispensed with except for valid and compelling reasons.[16] Formal investigations entail notice and hearing. However, the requirements of notice and hearing in administrative cases do not necessarily connote full adversarial proceedings, as actual adversarial proceedings become necessary only for clarification or when there is a need to propound searching questions to witnesses who give vague

testimonies.[17] Due process is fulfilled when the parties were given reasonable opportunity to be heard and to submit evidence in support of their arguments.[18]

From the records extant in the present case, it appears that the Investigating Commissioner conducted a hearing on January 16, 2002 where it was agreed that the complainant and the respondent shall file their respective position papers, after which the case shall be deemed submitted for resolution.[19] No further hearings were conducted.

It is also disturbing to note that the abovementioned Resolution of the IBP Board of Governors, annulling and setting aside the recommendation of the Investigating Commissioner, is bereft of any findings of facts or explanation as to how and why it resolved to set aside the recommendation of the Investigating Commissioner and instead dismissed the complaint against respondent.

Section 12(a), Rule 139-B of the Rules of Court provides:

SEC. 12. Review and decision by the Board of Governors. –

(a) Every case heard by an investigator shall be reviewed by the IBP Board of Governors upon the record and evidence transmitted to it by the Investigator with his report. The decision of the Board upon such review shall be in writing and shall clearly and distinctly state the facts and the reasons on which it is based. It shall be promulgated within a period not exceeding thirty (30) days from the next meeting of the Board following the submittal of the Investigator's report. (Emphasis supplied)

In *Cruz vs. Cabrera*,[20] we reiterated the importance of the requirement that the decision of the IBP Board of Governors must state the facts and the reasons on which such decision is based, which is akin to what is required of the decisions of courts of record. We held therein that:

[A]side from informing the parties the reason for the decision to enable them to point out to the appellate court the findings with which they are not in agreement, in case any of them decides to appeal the decision, it is also an assurance that the judge, or the Board of Governors in this case, reached his judgment through the process of legal reasoning.

Noncompliance with this requirement would normally result in the remand of the case.[21]

Moreover, while we may consider the act of the IBP Board of Governors in simply adopting the report of the Investigating Commissioner as substantial compliance with said Rule, in this case, we cannot countenance the act of the IBP Board of Governors in merely stating that it is annulling the Commissioner's recommendation and then dismiss the complaint without stating the facts and the reasons for said dismissal.

However, considering that the present controversy has been pending resolution for quite some time, that no further factual determination is required, and the issues being raised may be determined on the basis of the numerous pleadings filed together with the annexes attached thereto, we resolve to proceed and decide the case on the basis of the extensive pleadings on record, in the interest of justice and speedy disposition of the case.[22]

Coming to the main issue in the present case, respondent is being accused of malpractice and misconduct on three grounds: first, for representing interests which conflict with those of his former client, herein complainant; second, for taking advantage of the information and knowledge that he obtained from complainant; and, third, for not notifying complainant of the dismissal of his counterclaim in Civil Case No. 1648.

We shall concurrently discuss the first and second grounds as they are interrelated.

Rule 15.03, Canon 15 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.”

Corollary to this, Canon 21 of the same Code enjoins a lawyer to preserve the confidences and secrets of his clients even after the attorney-client relation is terminated. Rule 21.02, Canon 21 specifically requires that:

A lawyer shall not, to the disadvantage of his client, use information acquired in the course of employment, nor shall he use the same to his own advantage or that of a third person, unless the client with full knowledge of the circumstances consents thereto.

In addition, Canon 6 of the Canons of Professional Ethics states:

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 any interest in or connection 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.

The obligation to represent the client with undivided fidelity and not to divulge his secrets or confidences forbids also the subsequent acceptance of retainers or employment from others in matters adversely affecting any interest of the client with respect to which confidence has been reposed.

Jurisprudence instructs that there is a representation of conflicting interests if the acceptance of the new retainer will require the attorney to do anything 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.[23] Another test to determine if there is a representation of conflicting 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.[24]

A lawyer is forbidden from representing a subsequent client against a former client when the subject matter of the present controversy is related, directly or indirectly, to the subject matter of the previous litigation in which he appeared for the former client.[25] Conversely, he may properly act as counsel for a new client, with full disclosure to the latter, against a former client in a matter wholly unrelated to that of the previous employment, there being in that instance no conflict of interests.[26] Where, however, the subject matter of the present suit between the lawyer's new client and his former client is in some way connected with that of the former client's action, the lawyer may have to contend for his new client that which he previously opposed as counsel for the former client or to use against the latter information confided to him as his counsel.[27] As we have held in *Maturan vs. Gonzales*:[28]

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.[29]

The proscription against representation of conflicting interests finds application where the conflicting interests arise with respect to the same general matter and is applicable however slight such adverse interest may be.[30] In essence, 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.[31]

In the present case, we find no conflict of interests when respondent represented herein complainant's nephew and other members of his family in the ejectment case, docketed as Civil Case No. 528, and in the criminal complaint, denominated as I.S. Case No. 99-188, filed by herein complainant against them. The only established participation respondent had with respect to the parcel of land purchased by complainant, is that he was the one who notarized the deed of sale of the said land. On that basis alone, it does not necessarily follow that respondent obtained any information from herein complainant that can be used to the detriment of the latter in the ejectment case he filed.

While complainant alleges that it was respondent who advised him to allow his nephew to temporarily occupy the property in order to establish complainant's possession of said property as against another claimant, no corroborating evidence was presented to prove this allegation. Defendant, in his answer to the complaint for ejectment, raised the issue as to the right of the vendor to sell the said land in favor of complainant.[32] However, we find this immaterial because what is actually in issue in the ejectment case is not the ownership of the subject lot but the ownership of the house built on the said lot. Furthermore, the subject matter of I.S. Case No. 99-188 filed by complainant against his nephew and other members of his family involves several parts of trucks owned by herein complainant.[33] This case is not in any way connected with the controversy involving said parcel of land. In fine, with respect to Civil Case No. 528 and I.S. Case No. 99-188, complainant failed to present substantial evidence to hold respondent liable for violating the prohibition against representation of conflicting interests.

However, we find conflict of interests in respondent's representation of herein complainant in Civil Case No. 1648 and his subsequent employment as counsel of the accused in Criminal Case No. 3159.

The subject matter in Civil Case No. 1648 is Lot 609 located at Escalante, Negros Occidental, the same parcel of land involved in Criminal Case No. 3159 filed by herein complainant against several persons, accusing them of theft for allegedly cutting and stealing coconut trees within the premises of the said lot. Complainant contends that it is in this criminal case that respondent used confidential information which the latter obtained from the former in Civil Case No. 1648.

To prove his contention, complainant submitted in evidence portions of the transcript of stenographic notes taken during his cross-examination in Criminal Case No. 3159. However, after a reading of the said transcript, we find no direct evidence to prove that respondent took advantage of any information that he may have been acquired from complainant and used the same in the defense of his clients in Criminal Case No. 3159. The matter discussed by respondent when he cross-examined complainant is the ownership of Lot 609 in its entirety, only a portion of which was purportedly sold to complainant. Part of the defense raised by his clients is that herein complainant does not have the personality to file the criminal complaint as he is not the owner of the lot where the supposed theft occurred. It is possible that the information as to the ownership of the disputed lot used by respondent in bringing up this issue may have been obtained while he still acted as counsel for complainant. It is also probable that such information may have been taken from other sources, like the Registry of Deeds, the Land Registration Authority or the respondent's clients themselves.

Nonetheless, be that as it may, it cannot be denied that when respondent was the counsel of complainant in Civil Case No. 1648, he became privy to the documents and information that complainant possessed with respect to the said parcel of land. Hence, whatever may be said as to whether or not respondent utilized against complainant any information given to him in a professional capacity, the mere fact of their previous relationship should have precluded him from appearing as counsel for the opposing side. As we have previously held:

The relations of attorney and client is [are] founded on principles of public policy, on good taste. The question is not necessarily one of the rights of the parties, but as to whether the attorney has adhered to proper

professional standard. With these thoughts in mind, it behooves attorneys, like Caesar's wife, not only to keep inviolate the client's confidence, but also to avoid the appearance of treachery and double-dealing. Only thus can litigants be encouraged to entrust their secrets to their attorneys which is of paramount importance in the administration of justice.[34]

Moreover, we have held in *Hilado vs. David*[35] that:

Communications between attorney and client are, in a great number of litigations, a complicated affair, consisting of entangled relevant and irrelevant, secret and well known facts. In the complexity of what is said in the course of dealings between an attorney and client, inquiry of the nature suggested would lead to the revelation, in advance of the trial, of other matters that might only further prejudice the complainant's cause.[36]

Thus, respondent should have declined employment in Criminal Case No. 3159 so as to avoid suspicion that he used in the criminal action any information he may have acquired in Civil Case No. 1648.

Moreover, nothing on record would show that respondent fully apprised complainant and his new clients and secured or at least tried to secure their consent when he took the defense of the accused in Criminal Case No. 3159.

Respondent contends that he handled the defense of the accused in the subject criminal case for humanitarian reasons and with the honest belief that there exists no conflict of interests. However, the rule is settled that the prohibition against representation of conflicting interests applies although the attorney's intentions and motives were honest and he acted in good faith.[37] Moreover, the fact that the conflict of interests is remote or merely probable does not make the prohibition inoperative.[38]

Respondent also asserts that when he accepted employment in Criminal Case No. 3159, the attorney-client relations between him and complainant in Civil Case No. 1648 had already been terminated. This defense does not hold water because the termination of the relation of attorney and client provides no justification for a lawyer to represent an interest adverse to or in conflict with that of the former client.[39]

Thus, we find respondent guilty of misconduct for representing conflicting interests.

As to the third ground, we find that complainant failed to present substantial evidence to prove that respondent did not inform him of the dismissal of his counterclaim in Civil Case No. 1648. On the contrary, we find sufficient evidence to prove that complainant has been properly notified of the trial court's order of dismissal. The only proof presented by complainant to support his claim is the affidavit of his daughter confirming complainant's contention that respondent indeed failed to inform him of the dismissal of his counterclaim.[40] However, in the same affidavit, complainant's daughter admits that it was on December 4, 1989 that respondent received the order of the trial court dismissing complainant's counterclaim. Respondent, presented a "certification" dated December 11, 1989, or one week after his receipt of the trial court's order, where complainant's daughter acknowledged receipt of the entire records of Civil Case No. 1648 from complainant.[41] The same "certification" relieved respondent of his obligation as counsel of complainant. From the foregoing, it can be inferred that respondent duly notified complainant of the dismissal of his counterclaim. Otherwise, complainant could not have ordered his daughter to withdraw the records of his case from respondent at the same time relieving the latter of responsibility arising from his obligation as complainant's counsel in that particular case.

As to the penalty to be imposed, considering respondent's honest belief that there is no conflict of interests in handling Civil Case No. 1648 and Criminal Case No. 3159, and it appearing that this is respondent's first infraction of this nature, we find the penalty of suspension to be disproportionate to the offense committed.[42] Moreover, we take into account respondent's undisputed claim that there are only three lawyers who are actually

engaged in private practice in Escalante, Negros Occidental, where both complainant and respondent reside. One of the lawyers is already handling complainant's case, while the other lawyer is believed by respondent's clients to be a relative of complainant. Hence, respondent's clients believed that they had no choice but go to him for help. We do not find this situation as an excuse for respondent to accept employment because he could have referred his clients to the resident lawyer of the Public Attorney's Office or to other lawyers in the neighboring towns. Nonetheless, in view of respondent's belief that he simply adhered to his sworn duty to defend the poor and the needy, we consider such situation as a circumstance that mitigates his liability. Considering the foregoing facts and circumstances, we find it proper to impose a fine on respondent. In *Sibulo vs. Cabrera*,^[43] the respondent is fined for having been found guilty of unethical conduct in representing two conflicting interests.

Respondent is further reminded to be more cautious in accepting professional employments, 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 clients.^[44]

WHEREFORE, respondent Atty. Elias A. Pontevedra is found GUILTY of representing conflicting interests and is hereby FINED in the amount of Ten Thousand (P10,000.00) Pesos. He is WARNED that a repetition of the same or similar acts will be dealt with more severely.

The Board of Governors of the Integrated Bar of the Philippines is DIRECTED to be heedful of the requirements provided for in Section 12(a), Rule 139-B of the Rules of Court as discussed in the text of herein decision.

SO ORDERED.

Puno, (Chairman), Callejo, Sr., Tinga, and Chico-Nazario, JJ., concur.

[1] Spelled as Eliseo in other parts of the Rollo and Records.

[2] Rollo, Vol. I, p. 36.

[3] *Id.*, pp. 36-37.

[4] *Id.*, pp. 37-38.

[5] *Ibid.*

[6] *Id.*, pp. 38-39.

[7] *Id.*, pp. 39-41.

[8] *Id.*, p. 74.

[9] A perusal of the records shows that there are two criminal complaints for theft filed by herein complainant where respondent represented the accused: The first is Criminal Case No. 3159, entitled, "People vs. Severina Brinquez, et. al." (Exhibits "O" and "S," Rollo, Volume III, pp. 66 and 74; while the second is I.S. Case No. 99-188, entitled, "Elesio C. Pormento, Sr., Complainant vs. Restituto Aligato, Sr., et. al., Respondents," pending before the Office of the Provincial Prosecutor of Negros Occidental (Exhibits "6," "6-a" and "T," Rollo, Volume III, pp. 34-35 and 76).

[10] *Id.*, pp. 74-77.

[11] *Id.*, p. 87.

[12] Id., p. 86

[13] Rollo, Vol. III, pp. 3-6.

[14] Id., p. 11.

[15] Id., pp. 17 and 37.

[16] Tabang vs. Gacott, AC No. 6490, September 29, 2004, citing Arandia vs. Magalong, 386 SCRA 187, 191 (2002).

[17] Artezuela vs. Maderazo, 381 SCRA 419, 424 (2002).

[18] Ibid.

[19] Rollo, Vol. III, p. 10.

[20] A.C. No. 5737, October 25, 2004, citing Teodosio vs. Nava, 357 SCRA 406 (2001).

[21] Ibid.

[22] Ibid.

[23] Abaqueta vs. Florido, 395 SCRA 569 (2003); Hornilla vs. Salunat, 405 SCRA 220, 223 (2003).

[24] Santos, Sr. vs. Beltran, 418 SCRA 17, 25-26 (2003).

[25] Agpalo, Legal Ethics, 6[th] Edition, 1997, p. 224.

[26] Ibid.

[27] Ibid.

[28] 287 SCRA 443 (1998).

[29] Id., pp. 446-447.

[30] Nakpil vs. Valdes, 286 SCRA 758, 771 (1998).

[31] Id., pp. 230-231.

[32] Exhibit "Q," Rollo, Vol. III, p. 72.

[33] Exhibits "6" and "6-a," supra.

[34] Artezuela vs. Maderazo, 381 SCRA 419, 426-427 (2002).

[35] 84 Phil. 569 (1949).

[36] Id., p. 578.

[37] Maturan vs. Gonzales, 287 SCRA 443, 446 (1998); Artezuela vs. Maderazo, supra, p. 426.

[38] Agpalo, supra, pp. 217-218.

[39] San Jose vs. Cruz, 57 Phil. 792, 794 (1949); Natan vs. Capule, 91 Phil. 640, 648 (1952).

[40] Exhibit "J," Rollo, Vol. III, p. 60.

[41] Exhibit "1," Rollo, Vol. III, p. 28.

[42] Hornilla vs. Salunat, supra, p. 226.

[43] 336 SCRA 237, 240 (2000).

[44] Gamilla vs. Mariño, JR., 399 SCRA 308, 321 (2003).

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.